WORKSHOP AGENDA
Texas Appraiser Licensing & Certification Board
Stephen F. Austin Building
1700 North Congress, Room 400a
Austin, Texas 78701

Thursday, November 17, 2016, 1:00pm

1. Call to order & roll call

2. Texas Public Investment Act training

3. Discussion regarding roles and duties of Board members, including ethics, limitations on lobbying, and other prohibited activities under Texas law

4. Discussion regarding TALCB Committees:
   a. Executive Committee
   b. Budget Committee
   c. Education Committee
   d. Enforcement Committee
   e. AMC Advisory Committee

5. Introduction of Staff

6. Discussion regarding possible legislative changes for 2017 and identification of key legislative members and committee chairs

7. Discussion regarding alternative appraisal standards

8. Report on Mentor Roundtable

9. Discussion regarding action items from today to bring forward to future Board meetings

10. Adjourn

The Texas Appraiser Licensing and Certification Board may meet with its attorney in executive session on any item listed above as authorized by the Texas Open Meetings Act, Tex. Gov't Code §551.071.

Pursuant to section 46.035(c) of the Texas Penal Code handgun license holders are prohibited from carrying a handgun at this open meeting. This prohibition applies to both concealed and open carry handguns.

OCCUPATIONS CODE

TITLE 7. PRACTICES AND PROFESSIONS RELATED TO REAL PROPERTY AND HOUSING

SUBTITLE A. PROFESSIONS RELATED TO REAL ESTATE

CHAPTER 1104. APPRAISAL MANAGEMENT COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1104.001. SHORT TITLE. This chapter may be cited as the Texas Appraisal Management Company Registration and Regulation Act.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.002. PURPOSE. The purpose of this chapter is to establish and enforce standards related to appraisal management services for appraisal reports on residential properties located in this state with fewer than five units.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.003. DEFINITIONS. (a) The definitions in Section 1103.003 apply to this chapter.

(b) In this chapter:

(1) "Appraisal management company" means, in connection with valuing properties collateralizing mortgage loans or mortgages incorporated in a securitization, an external third party authorized either by a creditor of a consumer credit transaction secured by a consumer's principal dwelling or by an underwriter of or other principal in the secondary mortgage

markets that directly or indirectly performs appraisal management services.

(2) "Appraisal management service" means to directly or indirectly perform any of the following acts:

(A) administer an appraisal panel;

(B) recruit, retain, or select an appraiser;

(C) contract with an appraiser to perform an appraisal assignment;

(D) provide a completed appraisal performed by an appraiser to one or more clients; or

(E) manage the process of having an appraisal performed, including:

(i) receiving and assigning appraisal orders and reports;

(ii) tracking and determining the status of orders for appraisals;

(iii) conducting quality control of a completed appraisal before delivery of the appraisal to the person who ordered the appraisal;

(iv) collecting fees from creditors and underwriters for services provided; or

(v) reimbursing appraisers for services performed.

(3) "Appraisal panel" means a pool of licensed or certified appraisers who perform appraisals as independent contractors for an appraisal management company.

(4) "Appraisal review" means the act or process of developing and communicating an opinion about the quality of another appraiser's work that was performed as part of an appraisal assignment. The term does not include an examination of an appraisal for grammatical, typographical, mathematical, or other similar administrative errors that do not involve the appraiser's professional judgment, including compliance with the elements of the client's statement of work.

(5) "Appraiser" means a person licensed or certified under Chapter 1103.

(6) "Controlling person" means:

(A) an owner, officer, or director of an appraisal management company;

(B) an individual employed, appointed, or authorized by an appraisal management company that has the authority to enter into a contractual relationship with other persons for the performance of appraisal management services and the authority to enter into agreements with appraisers for the performance of appraisals; or

(C) an individual who possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of an appraisal management company.

(6-a) "Federally regulated AMC" means an appraisal management company that is:

(A) owned and controlled by an insured depository institution, as defined in 12 U.S.C. §1813; and

(B) regulated by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation.

(7) "Financial institution" means:

(A) a bank, savings bank, or savings and loan association or a subsidiary or affiliate of a bank, savings bank, or savings and loan association;

(B) a state or federal credit union or a subsidiary, affiliate, or credit union service organization of a state or federal credit union;

(C) an insurance company licensed or authorized to do business in this state under the Insurance Code;

(D) a mortgage banker registered under Chapter 157, Finance Code;

(E) a person licensed under Chapter 156, Finance Code;

(F) a lender licensed under Chapter 342, Finance Code;

(G) a farm credit system institution; or

(H) a political subdivision of this state conducting an affordable home ownership program.

(8) "Uniform Standards of Professional Appraisal Practice" means the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.004. EXEMPTIONS. (a) This chapter does not apply to:

(1) a person who exclusively employs appraisers on an employer and employee basis for the performance of appraisals;

(2) a person acting as an appraisal firm as defined by board rule that at all times during a calendar year employs on an exclusive basis as independent contractors not more than 15 appraisers for the performance of appraisals;

(3) a financial institution, including a department or unit within the institution, that is regulated by an agency of this state or the United States government;

(3-a) a federally regulated AMC;

(4) subject to Subsection (b), a person who enters into an agreement with an appraiser for the performance of an appraisal that on completion results in a report signed by both the appraiser who completed the appraisal and the appraiser who requested completion of the appraisal;

(5) an appraisal management company:

(A) operating only in this state with an appraisal panel of not more than 15 appraisers at all times during a calendar year; or

(B) operating in multiple states, including this state, with an appraisal panel of not more than 24 appraisers in all states at all times during a calendar year; or

(6) an appraisal management company that is a subsidiary owned and controlled by a financial institution that

is subject to appraisal independence standards at least as stringent as those under Section 1104.203 or the Truth in Lending Act (15 U.S.C. Section 1601 et seq.) through regulation by an agency of this state or the United States government.

(b) An appraisal management company may not require an employee of the appraisal management company who is an appraiser to sign an appraisal that is completed by another appraiser who contracts with the appraisal management company in order to avoid the requirements of this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

SUBCHAPTER B. BOARD POWERS AND DUTIES

Sec. 1104.051. RULES. The board may adopt rules necessary to administer the provisions of this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.052. FEES. (a) Subject to Subsection (b), the board by rule shall establish application, renewal, and other fees in amounts so that the sum of the fees paid by all appraisal management companies seeking registration under this chapter is sufficient for the administration of this chapter.

(b) The board shall collect from each appraisal management company registered under this chapter the national registry fee required by the appraisal subcommittee for each person who is on the appraisal panel of the company and licensed or certified as an appraiser in this state. ~~The board shall deposit the registry fees to the credit of the appraiser registry account in the general revenue fund.~~

(c) Notwithstanding Section 1104.004, the board may collect from each federally regulated AMC:

(1) the national registry fee required by the appraisal subcommittee;

(2) information regarding the determination of the national registry fee as required by the appraisal subcommittee;

(3) any other information required by state or federal law; and

(4) a fee established by rule sufficient for the administration of this subsection.

(d)~~(c)~~ The board shall deposit the national registry fees collected under this section to the credit of the appraiser registry account in the general revenue fund.

(e) The national registry fees collected under this section~~Subsection (b)~~ shall be sent to the appraisal subcommittee regularly as required by federal law.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

SUBCHAPTER C. REGISTRATION REQUIREMENTS

Sec. 1104.101. REGISTRATION REQUIRED. Unless a person is registered under this chapter, a person may not:

(1) act or attempt to act as an appraisal management company;

(2) provide or attempt to provide appraisal management services; or

(3) advertise or represent or attempt to advertise or represent the person as an appraisal management company.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.102. ELIGIBILITY FOR REGISTRATION; OWNERSHIP. (a) A person who has had a license or certificate to act as an appraiser denied, revoked, or surrendered in lieu of revocation in any state may not own in any manner ~~more than one percent of~~

an appraisal management company registered or applying for registration under this chapter unless:

(1) the person has subsequently had the~~a~~ license or certificate to act as an appraiser granted or reinstated; and

(2) the license or certificate to act as an appraiser was denied, revoked, or surrendered in lieu of revocation for a non-substantive reason as determined by the board.

~~(b) An entity more than 10 percent of which is owned by a person who has had a license or certificate to act as an appraiser denied, revoked, or surrendered in lieu of revocation in any state may not own more than 10 percent of an appraisal management company registered or applying for registration under this chapter unless the person has subsequently had a license or certificate to act as an appraiser granted or reinstated.~~

(b)~~(c)~~ A person owning more than 10 percent of an appraisal management company in this state must:

(1) be of good moral character, as determined by the board; and

(2) submit to a background investigation, as determined by the board.

~~(d) An appraisal management company applying for registration under this chapter shall certify to the board that:~~

~~(1) it has reviewed each entity that owns more than 10 percent of the company; and~~

~~(2) no entity reviewed under Subdivision (1) is more than 10 percent owned by a person who has had a license or certificate to act as an appraiser denied, revoked, or surrendered in lieu of revocation and who has not subsequently had a license or certificate to act as an appraiser granted or reinstated.~~

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.103. APPLICATION FOR REGISTRATION OR RENEWAL. (a) An applicant for registration or registration renewal under this chapter must submit:

(1) an application on a form approved by the board; and

(2) the application or renewal fee established under Section 1104.052(a).

(b) The application must contain:

(1) the name, business address, and telephone contact information of the applicant~~entity~~ seeking registration;

(2) if the applicant~~entity~~ is not a corporation domiciled in this state, the name and contact information for the company's agent for service of process in this state;

(3) the name, address, and contact information for any person~~individual or any corporation, partnership, or other business entity~~ that owns more than 10 percent of the applicant~~appraisal management company~~;

(4) the name, address, and contact information for at least one controlling person;

(5) the designation of a primary contact under Section 1104.104;

(6) the name and contact information of at least one appraiser designated by the applicant~~company~~ to respond to and communicate with appraisers on the applicant's~~company's~~ appraisal panel regarding appraisal assignments;

(7) a certification that the applicant~~entity~~ has a system in place to ensure compliance with Subchapter D and Section 129E of the Truth in Lending Act (15 U.S.C. Section 1601 et seq.);

(8) a written irrevocable consent to service of process; and

(9) any other information required by the board to approve the application.

(c) The board shall adopt rules regarding the registration or renewal of a registration under this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.104. DESIGNATION OF PRIMARY CONTACT. (a) An appraisal management company applying for registration under this chapter shall designate one controlling person as the primary contact for all communication between the board and the company.

(b) The controlling person designated under Subsection (a):

(1) must:

(A) be certified as an appraiser in at least one state at all times during the designation; or

(B) have completed:

(i) the 15-hour national Uniform Standards of Professional Appraisal Practice course; and

(ii) the seven-hour national Uniform Standards of Professional Appraisal Practice update course not more than two years before the renewal of the appraisal management company's registration;

(2) may not have had a license or certificate to act as an appraiser denied, revoked, or surrendered in lieu of revocation in any state unless:

(i) the person has subsequently had the~~a~~ license or certificate to act as an appraiser granted or reinstated; and

(ii) the license or certificate to act as an appraiser was denied, revoked, or surrendered in lieu of revocation for a non-substantive reason as determined by the board;

(3) must be of good moral character, as determined by the board; and

(4) shall submit to a background investigation, as determined by the board.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.105. DENIAL OF REGISTRATION OR RENEWAL OF REGISTRATION. (a) The board may deny a registration or renewal of a registration:

(1) to an applicant who fails to satisfy a requirement of this chapter; or

(2) on a determination by the board that:

(A) there is reasonable evidence that any person who owns an interest in~~more than 10 percent of~~ the appraisal management company or any controlling person of the company has~~, within the 24 months preceding the date of the application,~~ had a license or certification as an appraiser or a registration as an appraisal management company suspended, revoked, or put on probation in any state;

(B) the applicant has, while registered under this chapter, demonstrated incompetency, untrustworthiness, or conduct or practices that render the registrant unfit to perform appraisal management services; or

(C) the applicant no longer performs appraisal management services in good faith and is a source of detriment, injury, or loss to the public.

(b) The board shall immediately provide written notice to the applicant of the board's denial of a registration under this chapter.

(c) An appeal of the denial of a registration is governed by Chapter 2001, Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.106. ISSUANCE AND PUBLICATION OF REGISTRATION NUMBER. The board shall:

(1) issue a unique registration number to each appraisal management company registered under this chapter; and

(2) publish annually a list of the companies registered under this chapter and the registration number of each company.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.107. EXPIRATION OF REGISTRATION. Unless renewed, a registration issued under this chapter expires on the second anniversary of the date the registration is issued.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

SUBCHAPTER D. PRACTICE BY APPRAISAL MANAGEMENT COMPANY

Sec. 1104.151. EMPLOYMENT OF CERTAIN PERSONS PROHIBITED. (a) An appraisal management company registered under this chapter may not knowingly:

(1) employ a person in a position in which the person has the responsibility to order appraisals or to review completed appraisals if the person has had a license or certificate to act as an appraiser denied, revoked, or surrendered in lieu of revocation in any state;

(2) enter into any independent contractor arrangement for the provision of appraisals or appraisal management services with any person who has had a license or certificate to act as an appraiser denied, revoked, or surrendered in lieu of revocation in any state; or

(3) enter into any contract, agreement, or other business relationship for the provision of appraisals or appraisal management services with any entity that employs, has entered into an independent contract arrangement, or has entered into any contract, agreement, or other business relationship with any person who has ever had a license or certificate to act

as an appraiser denied, revoked, or surrendered in lieu of revocation in any state.

(b) An appraisal management company is not in violation of Subsection (a) if:

(1) the person whose license or certification was denied, revoked, or surrendered in lieu of revocation has since that denial, revocation, or surrender had the~~a~~ license or certificate granted or reinstated;

(2) the license or certification was denied, revoked, or surrendered in lieu of revocation for a non-substantive reason as determined by the board; and

(3) the person maintains the license or certificate in good standing.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.152. VERIFICATION OF LICENSURE OR CERTIFICATION. An appraisal management company registered under this chapter must verify that an individual to whom the company is making an assignment for the completion of an appraisal:

(1) is licensed or certified under Chapter 1103; and

(2) has not had a license or certificate as an appraiser denied, revoked, or surrendered in lieu of revocation since the last time the company made an assignment for an appraisal to the appraiser.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.153. APPRAISAL REVIEW. Unless otherwise exempt by board rule, a~~A~~ person who performs an appraisal review for an appraisal management company as required in Section 1104.155 must be:

(1) licensed as an appraiser ~~or certified~~ under Chapter 1103; and

Commented [KW1]: At least one AMC has questioned whether a reviewer must be licensed in Texas to perform reviews.

(2) qualified to perform the appraisal~~with at least the same certification for the property type as the appraiser who completed the report~~ being reviewed.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.154. COMPETENCY OF APPRAISERS. Before making an assignment to an appraiser, an appraisal management company must verify that the appraiser receiving the assignment satisfies each provision of the competency rule of the Uniform Standards of Professional Appraisal Practice for the appraisal being assigned.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.155. PROFESSIONAL STANDARDS. An appraisal management company registered under this chapter shall on a periodic basis perform an appraisal review of the work of appraisers performing appraisal services for the company to ensure that the services comply with:

(1) the edition of the Uniform Standards of Professional Appraisal Practice in effect at the time of the appraisal; or

(2) other standards prescribed by board rule.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.156. BUSINESS RECORDS. (a) An appraisal management company required to register~~ed~~ under this chapter or that has applied for registration under this chapter shall retain for at least five years all business records relating to each service request that the company receives and the appraiser who performs the appraisal for the company.

(b) The board may audit the records of an appraisal management company required to register~~ed~~ under this chapter to ensure compliance with federal law, this chapter, board rules, and the Uniform Standards of Professional Appraisal Practice.

(c) A written record of all substantive communications between an appraisal management company required to register~~ed~~ under this chapter and an appraiser relating to inclusion on an appraisal panel or to an appraisal assignment must be maintained as provided under Subsection (a).

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.157. COMPENSATION OF APPRAISERS. (a) An appraisal management company shall:

(1) except in cases of breach of contract or substandard performance of services, pay an appraiser for the completion of an appraisal or valuation assignment not later than the 60th day after the date the appraiser provides the completed appraisal or valuation assignment to the company or its assignee; and

(2) compensate appraisers at a rate that is reasonable and customary for appraisals being performed in the market area of the property being appraised consistent with the presumptions under federal law.

(b) An appraiser who is aggrieved under this section may file a complaint with the board against the appraisal management company if the matter remains unresolved after the appraiser completes the company's dispute resolution process under Section 1104.162.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Commented [KW2]: Request from at least 1 appraiser for AMC Committee recommends leaving at 60th day. Most other states with AMC programs use 45 or 60 days.

Sec. 1104.158. STATEMENT OF FEES. (a) In reporting to a client, an appraisal management company shall separately state the fees:

(1) paid to an appraiser for the completion of an appraisal; and

(2) charged by the company for appraisal management services.

(b) An appraisal management company may not:

(1) prohibit an appraiser from recording in the body of the report that is submitted by the appraiser to the company the fee that the appraiser was paid by the company for completing the appraisal; or

(2) include any fees for appraisal management services performed by the company in the amount the company reports as charges for the actual completion of an appraisal by an appraiser.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.159. DISCLOSURE OF REGISTRATION NUMBER. An appraisal management company registered under this chapter shall disclose the company's registration number on all documents used to procure appraisals in this state.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.160. MANDATORY REPORTING. An appraisal management company that has a reasonable basis to believe an appraiser is failing to comply with the Uniform Standards of Professional Appraisal Practice in a manner that materially affects a value conclusion, violating applicable laws, or otherwise engaging in unethical or unprofessional conduct shall refer the matter to the board in the manner provided by Section 1104.204.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.161. REMOVAL OF APPRAISER FROM APPRAISAL PANEL. (a) ~~Other than during the first 30 days after the date an appraiser is first added to the appraisal panel of an appraisal management company, a~~ An appraisal management company may not remove an appraiser from its panel, or otherwise refuse to assign requests for appraisal services to an appraiser without:

(1) notifying the appraiser in writing of the reasons for removal from the company's panel;

(2) if the appraiser is being removed from the panel for illegal conduct, a violation of the Uniform Standards of Professional Appraisal Practice, or a violation of this chapter, notifying the appraiser of the nature of the alleged conduct or violation; and

(3) providing an opportunity for the appraiser to respond in writing to the notification.

(b) An appraiser who is removed from the appraisal panel of an appraisal management company for alleged illegal conduct, a violation of the Uniform Standards of Professional Appraisal Practice, or a violation of this chapter, may file a complaint with the board for a review of the decision of the company if the matter remains unresolved after the appraiser completes the company's dispute resolution process under Section 1104.162.

(c) In a review under Subsection (b), the board may not make any determination regarding the nature of the business relationship between the appraiser and the appraisal management company that is unrelated to the grounds for the removal.

(d) The board shall hear and resolve a complaint filed under Subsection (b) not later than the 180th day after the date the complaint is filed with the board.

(e) If after opportunity for hearing and review, the board determines that an appraiser did not commit the alleged violation, the board shall order that the appraiser be returned

Commented [KW3]: Recommended by ASC.

to the appraisal panel of the appraisal management company. The appraisal management company may not refuse to make assignments for appraisal services or otherwise penalize the appraiser after returning the appraiser to the company's appraisal panel.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.162. DISPUTE RESOLUTION. An appraisal management company shall make a dispute resolution process available to review a written request by an appraiser who:

(1) is dismissed from the company's appraisal panel for a reason stated in Section 1104.161(a)(2);

(2) is not paid as required by Section 1104.157; or

(3) alleges a violation by the company of one or more prohibitions in Section 1104.203.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

SUBCHAPTER E. DISCIPLINARY ACTIONS AND PROCEDURES AND ADMINISTRATIVE PENALTIES

Sec. 1104.201. DISCIPLINARY POWERS OF BOARD. (a) The board may reprimand an appraisal management company or conditionally or unconditionally suspend or revoke any registration issued under this chapter if the board determines that the appraisal management company has:

(1) violated or attempted to violate this chapter or any rule adopted by the board under this chapter; or

(2) procured or attempted to procure a license or registration by fraud, misrepresentation, or deceit.

(b) The board may probate the suspension or revocation of a registration under reasonable terms determined by the board.

(c) The board may report any disciplinary action taken by the board against an appraisal management company required to register under this chapter to the appraisal subcommittee.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.202. ADMINISTRATIVE PENALTY. (a) In addition to any other disciplinary action under this chapter, the board may impose an administrative penalty against a person who violates this chapter or a rule adopted under this chapter.

(b) The amount of the administrative penalty may not exceed $10,000 for each violation. Each day of a continuing violation is a separate violation.

(c) The amount of the penalty shall be based on:

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter a future violation;

(4) efforts made to correct the violation; —and

(5) any other matter that justice may require.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.203. PROHIBITED PRACTICES. (a) An appraisal management company or an employee, director, officer, or agent of an appraisal management company may not:

(1) cause or attempt to cause the appraised value of a property assigned under an appraisal to be based on any factor other than the independent judgment of the appraiser;

(2) cause or attempt to cause the mischaracterization of the appraised value of a property in conjunction with a consumer credit transaction;

(3) seek to influence an appraiser or otherwise to encourage a targeted value in order to facilitate the making or pricing of a consumer credit transaction;

(4) alter, modify, or otherwise change a completed appraisal report submitted by an appraiser by:

(A) altering or removing the appraiser's signature or seal; or

(B) adding information to, removing information from, or changing information contained in the appraisal report, including any disclosure submitted by an appraiser in or with the report;

(5) condition the request for an appraisal or the payment of an appraisal fee, salary, or bonus on the opinion, conclusion, or valuation to be reached, or on a preliminary estimate or opinion requested from an appraiser;

(6) request that an appraiser provide an estimated, predetermined, or desired valuation in an appraisal report, or provide estimated values or comparable sales at any time before the appraiser's completion of an appraisal;

(7) provide to an appraiser an anticipated, estimated, encouraged, or desired value for a subject property or a proposed or target amount to be loaned to the borrower, except that a copy of the sales contract for a purchase transaction may be provided;

(8) make any part of the appraiser's fee or the appraisal management company's fee contingent on a favorable outcome, including:

(A) a loan closing; or

(B) a specific valuation being achieved by the appraiser in the appraisal report;

(9) withhold or threaten to withhold timely payment for an appraisal report or appraisal services rendered when the appraisal report or services are provided in accordance with the contract between the parties;

(10) withhold or threaten to withhold future business from an appraiser;

(11) demote or terminate or threaten to demote or terminate an appraiser;

(12) expressly or impliedly promise future business, promotions, or increased compensation for an appraiser;

(13) provide to an appraiser, or any person related to the appraiser, stock or other financial or nonfinancial benefits;

(14) allow the removal of an appraiser from an appraisal panel, without prior written notice to the appraiser;

(15) obtain, use, or pay for a second or subsequent appraisal or order an automated valuation model in connection with a mortgage financing transaction unless:

(A) there is a reasonable basis to believe that the initial appraisal was flawed or tainted and that basis is clearly and appropriately noted in the loan file;

(B) the subsequent appraisal or automated valuation model is done under a bona fide pre-funding or post-funding appraisal review or quality control process; or

(C) the subsequent appraisal or automated valuation model is otherwise required or permitted by federal or state law;

(16) prohibit legal and allowable communication between the appraiser and:

(A) the lender;

(B) a real estate license holder; or

(C) any other person from whom the appraiser, in the appraiser's own professional judgment, believes information would be relevant;

(17) refuse to accept an appraisal report prepared by more than one appraiser if an appraiser provides substantial assistance to another appraiser in the preparation of the report, unless the appraisal assignment names an individual appraiser or the statement of work requires an unassisted report; or

(18) require an appraiser to:

(A) prepare an appraisal report if the appraiser, in the appraiser's own professional judgment, believes the appraiser does not have the necessary expertise for

the specific geographic area and the appraiser has notified the company of this belief;

(B) prepare an appraisal report under a schedule that the appraiser, in the appraiser's own professional judgment, believes does not afford the appraiser the ability to meet all the relevant legal and professional obligations if the appraiser has notified the company of this belief;

(C) provide the appraisal management company with the appraiser's digital signature or seal;

(D) modify any aspect of an appraisal report without the appraiser's agreement that the modification is appropriate;

(E) engage in any act or practice that does not comply with:

(i) the Uniform Standards of Professional Appraisal Practice; or

(ii) any assignment conditions and certifications required by the client;

(F) engage in any other act or practice that impairs or attempts to impair an appraiser's independence, objectivity, or impartiality;

(G) enter into an agreement to not serve on the panel of another appraisal management company;

(H) indemnify or hold harmless the appraisal management company against liability except liability for errors and omissions by the appraiser; or

(I) pay a fee imposed on the appraisal management company under Section 1104.052.

(a-1) For purposes of subsection (a), the term "financial benefit" does not include fees paid by an appraisal management company to the appraiser for appraisal practice.

Commented [KW4]: Recommended by the ASC.

(b) Subsection (a) may not be construed to prohibit:

(1) an appraiser from reimbursing an appraisal management company for the actual cost of discretionary services provided to the appraiser;

(2) an appraiser from voluntarily providing the appraiser's digital signature to another person;

(3) an appraisal management company from asking an appraiser, after a report is delivered, to:

(A) consider additional appropriate property information, including the consideration of additional comparable properties to make or support an appraisal;

(B) provide further detail, substantiation, or explanation for the appraiser's value conclusion; or

(C) correct errors in the appraisal report;

(4) an appraisal management company from requiring an appraiser to provide advance notice of and an opportunity for the appraisal management company to participate in any legal and allowable communications between the appraiser and a lender; or

(5) a copy of an executed contract for a purchase transaction being provided to an appraiser.

(c) The board may institute a disciplinary action or impose an administrative penalty under Chapter 1103 against an appraiser who, while acting as an employee, officer, or agent of an appraisal management company, engages in conduct prohibited by Subsection (a).

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.204. COMPLAINT. (a) Any person, including a member of the board, may file with the board a written complaint on a form prescribed by the board.

(b) The board, on its own motion, may file a complaint against:

(1) an appraisal management company registered under this chapter; or

(2) a person who engages in an activity for which registration is required under this chapter without holding such registration.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.205. REVIEW AND INVESTIGATION. (a) On receipt of a complaint or on its own motion, the board shall review and investigate an alleged act or omission that the board believes is a ground for disciplinary action.

Commented [KW5]: NOTE: There is a four-year statute of limitations included in §1103.451 that precludes complaint investigations under Chapter 1103 or 1104.

(b) An investigator designated by the presiding officer of the board or commissioner shall investigate each allegation in a complaint to determine whether probable cause exists for a hearing on the complaint.

(c) If the board determines that a complaint does not present facts that are grounds for disciplinary action, the board or the commissioner shall dismiss the complaint and may not take further action.

(d) An investigation of an alleged violation by a person registered under this chapter may not be terminated solely on the basis that the person fails to renew the registration.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.206. GENERAL SUBPOENA AUTHORITY. (a) The board may request and, if necessary, compel by subpoena:

(1) the attendance of witnesses for examination under oath; and

(2) the production of records, documents, and other evidence relevant to the investigation of an alleged violation of this chapter for inspection and copying.

(b) The board may also issue a subpoena for purposes of an investigation of a complaint to determine whether the board should institute a contested case proceeding.

(c) If a person does not comply with a subpoena, the board, acting through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or in

the county in which a hearing conducted by the board may be held.

(d) The court shall order compliance with the subpoena if the court finds that good cause exists for the issuance of the subpoena.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.207. REPORT OF INVESTIGATION REQUIRED. (a) At the conclusion of the investigation of a complaint, the investigator shall submit to the board a written report to enable the board to determine what further action is necessary.

(b) The report must contain:

(1) statements of fact;

(2) the recommendations of the investigator; and

(3) the position or defense of the investigated appraisal management company.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.208. ACTION BASED ON REPORT. (a) Based on the report submitted under Section 1104.207, the board may:

(1) order further investigation of the complaint;

(2) permit the person who is the subject of the complaint to participate in a voluntary discussion of the facts and circumstances of the alleged violation;

(3)~~(2)~~ determine that there is not probable cause to believe that a violation occurred and dismiss the case; or

(4)~~(3)~~ determine that there is probable cause to believe that a violation occurred and enter into an agreed order with the respondent as specified in Section 1104.2081 or proceed as the complainant with a contested case hearing under Chapter 2001, Government Code.

(b) The board by rule may delegate any of its authority under Subsection (a) to the commissioner.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.2081. AGREED ORDER. (a) The board may negotiate a settlement and enter into an agreed order with a person or an appraisal management company who is the subject of a complaint under this chapter.

(b) An agreed order must be:

(1) approved by the board; and

(2) signed by the commissioner and the person or appraisal management company who is the subject of the complaint.

(c) A board member who participates in negotiating an agreed order under this section is disqualified from participating in the adjudication of a contested case that results from the negotiation.

(d) A person or appraisal management company who consents to negotiate under this section waives the right to notice and the opportunity to be heard under Chapter 2001, Government Code, during the negotiation.

(e) A person or appraisal management company who enters into an agreed order that is approved by the board may be disciplined for failure to comply with the agreed order.

Sec. 1104.2082. CONFIDENTIALITY OF INVESTIGATION MATERIAL. (a) Information or material, including any investigation file, is confidential and not subject to disclosure under Chapter 552, Government Code, or any other means of legal compulsion for release, including disclosure, discovery, or subpoena, if the information or material is prepared or compiled by the board in connection with a complaint, investigation, or audit of any person subject to the jurisdiction of the board.

(b) Notwithstanding Subsection (a), information or material prepared or compiled by the board in connection with a complaint, investigation, or audit may be disclosed:

(1) to the respondent;

(2) to a person providing a service to the board, including an expert or other witness, or an investigator, if the information is necessary for preparation for, or a presentation in, a disciplinary proceeding against an applicant or license holder, or a subsequent trial or appeal taken from a disciplinary proceeding;

(3) to an entity in another jurisdiction that licenses, registers, credentials, or disciplines any person subject to the jurisdiction of the board;

(4) to a law enforcement agency;

(5) to the State Office of Administrative Hearings; or

(6) to the board, or a panel of the board, for use during any proceeding conducted by the State Office of Administrative Hearings or in a subsequent trial or appeal of a board action or order.

(c) The release of information under Subsection (b) is not a voluntary disclosure for purposes of Section 552.007, Government Code.

(d) The board may require a confidentiality agreement be signed by a person entitled to receive information under Subsection (b) before releasing the information.

(e) The board may withhold information or material that is confidential and not subject to disclosure under this section without the necessity of requesting a decision from the attorney general under Subchapter G, Chapter 552, Government Code.

(f) Notwithstanding Subsection (a), on the dismissal or final resolution of a complaint, investigation, or audit, information or material prepared or compiled by the board in connection with the complaint, investigation, or audit, including a completed audit report or a final order of the

board, is subject to disclosure under Chapter 321 or 552, Government Code.

Sec. 1104.209. NOTICE OF VIOLATION AND PENALTY. (a) If, after investigating a possible violation and the facts surrounding that possible violation, the board determines that a violation occurred, the board shall give written notice of the violation to the person alleged to have committed the violation.

(b) The notice must:

(1) include a summary of the alleged violation;

(2) state the recommended sanction, including the amount of the proposed administrative penalty; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(c) Not later than the 20th day after the date the person receives the notice, the person may:

(1) accept the board's determination, including the proposed administrative penalty; or

(2) make a written request for a hearing on that determination.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.210. PENALTY TO BE PAID~~ OR HEARING REQUESTED~~. If the person accepts the board's determination or fails to respond to the notice in a timely manner, the board by order shall approve the determination and impose the proposed penalty.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.211. TEMPORARY SUSPENSION. (a) The presiding officer of the board shall appoint a three-member disciplinary panel consisting of board members to determine whether a

person's registration under this chapter should be temporarily suspended.

(b) If the disciplinary panel determines from the information presented to the panel that a person registered under this chapter would, by the person's continuation in practice, constitute a continuing threat to the public welfare, the disciplinary panel shall temporarily suspend the person's registration.

(c) A registration may be suspended under this section without notice or hearing on the complaint if:

(1) institution of proceedings for a contested case hearing is initiated simultaneously with the temporary suspension; ~~—~~and

(2) a hearing is held under Chapter 2001, Government Code, and this chapter as soon as possible.

(d) A temporary suspension under this section automatically expires after 45 days if the board has not scheduled a hearing to take place within that time or if, at the board's request, the hearing is continued beyond the 45th day.

(e) Notwithstanding Chapter 551, Government Code, the disciplinary panel may hold a meeting by telephone conference call if immediate action is required and convening the panel at one location is inconvenient for any member of the panel.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.212. NOTICE OF HEARING. Not later than the 30th day before the ~~hearing~~ date of a contested case hearing ~~involving an appraisal management company~~, the board shall personally deliver or send by certified mail ~~to the company~~ notice of the hearing to the parties of the hearing.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.2121. ATTORNEY GENERAL REPRESENTATION. The attorney general may not represent the board in a contested case before the State Office of Administrative Hearings.

Sec. 1104.2122. IMMUNITY OF WITNESSES. (a) the board in a contested case hearing may grant a witness immunity from disciplinary action by the board.

(b) the official record of the hearing must include the reason for granting immunity.

Sec. 1104.213. APPLICABILITY OF ADMINISTRATIVE PROCEDURE LAW. Except as otherwise provided by this chapter, a proceeding under this subchapter is subject to Chapter 2001, Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.2131. RECORD OF PROCEEDINGS. (a) Contested case proceedings shall be recorded by:

(1) mechanical or electrical means; or

(2) a certified shorthand reporter.

(b) At the request of a party, the proceedings or any part of the proceedings shall be transcribed. The expense of the transcription shall be charged to the requesting party.

(c) The recording, stenographic notes, or transcription of oral proceedings shall be maintained by the board until at least the fifth anniversary of the date of the decision in the contested case.

Sec. 1104.2132. FAILURE TO APPEAR; COSTS. (a) If a respondent receives proper notice of a contested case hearing but does not appear in person at the hearing, the administrative law judge may conduct the hearing or enter an order, as the judge determines appropriate.

(b) The respondent is bound by the results of the hearing to the same extent as if the respondent had appeared.

(c) The administrative law judge may award reasonable costs to the board on a request for and proof of the costs if the respondent fails to appear at the hearing.

(d) In this section, the term "costs" means all costs related to the preparation for the hearing, including:

(1) costs charged by the State Office of Administrative Hearings; and

(2) costs of discovery, depositions, subpoenas, service of process, witness expenses, travel expenses, and investigative expenses.

Sec. 1104.214. ACTION AFTER HEARING. On conclusion of a contested case hearing under this subchapter, the administrative law judge shall:

(1) make findings of fact and conclusions of law; and

(2) issue to the board a proposal for decision that the board ~~shall~~ take one or more of the following actions:

(A) dismiss the charges;

(B) revoke the appraisal management company's registration;

(C) suspend the registration of the appraisal management company for a period of not more than five years;

(D) impose a period of probation, with or without conditions;

(E) issue a public or private reprimand or a warning;

(F) impose an administrative penalty; or

(G) require the payment of costs expended by the board associated with the contested case, including:

(i) attorney's fees;

(ii) any costs charged by the State Office of Administrative Hearings; and

(iii) any administrative costs related to the hearing, including witness expenses, travel expenses, or investigative expenses~~legal fees and administrative costs~~.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.215. DECISION BY BOARD. (a) Based on the findings of fact, ~~and~~ conclusions of law, and proposal for decision~~the recommendations~~ of the administrative law judge~~hearings examiner~~, the board by order may determine that:

(1) a violation has occurred and may impose an administrative penalty or another sanction; ~~—~~or

(2) a violation did not occur.

(b) The board shall give notice of the order to the person who is the subject of the order.

(c) The notice must include:

(1) ~~separate statements of~~ the findings of fact and conclusions of law separately stated;

(2) the amount of any penalty imposed or a description of any sanction imposed; ~~and~~

(3) a statement of the right of the person to judicial review of the order; and

(4) any other information required by law.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.216. MOTION~~APPLICATION~~ FOR REHEARING. (a) ~~Not later than the 20th day after the date a final decision is issued in a contested case, a~~A party may file a motion for rehearing~~an application~~ with the board~~ for a rehearing~~. The motion~~application~~ must state:

(1) the specific grounds for rehearing; ~~—~~and

(2) the relief sought.

(b) A motion for rehearing filed under this section is governed by Chapter 2001, Government Code~~The application is denied if the board does not grant it before the 120th day after the date the commissioner is served with the application~~.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.217. DECISION ON REHEARING. (a) The decision made at the conclusion of the original contested case hearing may not be reversed or modified for a procedural, evidentiary, or other error that did not cause substantial injustice to the parties.

(b) The decision made on a rehearing may incorporate by reference any part of the decision made at the conclusion of the original hearing.

(c) On rehearing, the administrative law judge shall consider facts not presented in the original hearing if:

(1) the facts arose after the original hearing was concluded;

(2) the party offering the evidence could not reasonably have provided the evidence at the original hearing; or

(3) the party offering the evidence was misled by a party regarding the necessity for offering the evidence at the original hearing.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

SUBCHAPTER F. OTHER ENFORCEMENT PROVISIONS

Sec. 1104.251. INJUNCTION. (a) The board may institute an action in its own name against any person, including a person who is not registered under this chapter, to enjoin a violation

of this chapter or a rule adopted by the board under this chapter.

(b) An action under this section must be brought in a district court in Travis County. The attorney general shall act as legal advisor to the board and provide necessary legal assistance.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.252. CIVIL PENALTY FOR ENGAGING IN ACTIVITY WITHOUT REQUIRED REGISTRATION. (a) A person who receives consideration for engaging in an activity for which registration is required under this chapter and who is not registered is liable for a civil penalty.

(b) The amount of a civil penalty imposed under this section may not be less than the amount of money equal to the value of the consideration received or more than three times the amount of money equal to the value of the consideration received.

(c) At the request of the board, the attorney general or a district or county attorney may bring an action in district court to recover a civil penalty under this section.

(d) A civil penalty recovered in an action under this section shall be deposited in the state treasury.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.253. CRIMINAL PENALTY FOR ENGAGING IN ACTIVITY WITHOUT REQUIRED REGISTRATION. (a) A person commits an offense if the person engages in an activity for which registration is required under this chapter without being registered.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

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Part II

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Part 34

Federal Reserve System

12 CFR Parts 208 and 225

Federal Deposit Insurance Corporation

12 CFR Parts 323 and 390

Bureau of Consumer Financial Protection

12 CFR Part 1026

Federal Housing Finance Agency

12 CFR Part 1222

Minimum Requirements for Appraisal Management Companies; Final Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 34

[Docket No. OCC–2014–0002]

RIN 1557–AD64

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Docket No. R–1486]

RIN 7100–AE15

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 323 and 390

RIN 3064–AE10

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

RIN 3170–AA44

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1222

RIN 2590–AA61

Minimum Requirements for Appraisal Management Companies

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); National Credit Union Administration (NCUA); Bureau of Consumer Financial Protection (Bureau); and Federal Housing Finance Agency (FHFA).

ACTION: Final rule.

SUMMARY: The OCC, Board, FDIC, NCUA, Bureau, and FHFA (collectively, the Agencies) are adopting a final rule to implement the minimum requirements in the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) to be applied by participating States in the registration and supervision of appraisal management companies (AMCs). The final rule also implements the minimum requirements in the Dodd-Frank Act for AMCs that are subsidiaries owned and controlled by an insured depository institution and regulated by a Federal financial institutions regulatory agency (Federally regulated AMCs). Under the final rule, these Federally regulated AMCs do not need to register with a State, but are subject to the same minimum requirements as State-regulated AMCs. The final rule also implements the requirement for States to report to the Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council (FFIEC) the information required by the ASC to administer the new national registry of AMCs (AMC National Registry). In conjunction with this implementation, the FDIC is integrating its appraisal regulations for State nonmember banks and State savings associations.

DATES: *Effective date.* This final rule will become effective on August 10, 2015.

Compliance date: Federally regulated AMCs must comply with the minimum requirements for providing appraisal management services under 12 CFR 34.215(a) no later than 12 months from the effective date of this final rule. The participating State or States in which a State-regulated AMC operates will establish the compliance deadline for State-regulated AMCs.

FOR FURTHER INFORMATION CONTACT:

OCC: Robert L. Parson, Appraisal Policy Specialist, (202) 649–6423, G. Kevin Lawton, Appraiser (Real Estate Specialist), (202) 649–7152, Mitchell E. Plave, Special Counsel, Legislative and Regulatory Activities Division, (202) 649–5490, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, or Christopher Manthey, Special Counsel, Bank Activities and Structure Division, (202) 649–5500.

Board: Carmen Holly, Supervisory Financial Analyst, Division of Banking Supervision and Regulation, at (202) 973–6122, or Walter McEwen, Senior Counsel, Legal Division, at (202) 452–3321, Board of Governors of the Federal Reserve System, Washington, DC 20551.

FDIC: Beverlea S. Gardner, Senior Examination Specialist, Division of Risk Management and Supervision, at (202) 898–3640, Sandra S. Barker, Senior Policy Analyst, Division of Depository and Consumer Protection, at (202) 898–3915, Mark Mellon, Counsel, Legal Division, at (202) 898–3884, or Benjamin K. Gibbs, Senior Regional Attorney, at (678) 916–2458, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

NCUA: John Brolin or Pamela Yu, Staff Attorneys, Office of General Counsel, at (703) 518–6540, or Vincent Vieten, Program Officer, Office of Examination and Insurance, at (703) 518–6360, or 1775 Duke Street, Alexandria, Virginia, 22314.

Bureau: Owen Bonheimer, Counsel, Office of Regulations, and David Friend, Counsel, Office of Regulations, 1700 G Street NW., Washington, DC 20552, at (202) 435–7000.

FHFA: Robert Witt, Senior Policy Analyst, Office of Housing and Regulatory Policy, (202) 649–3128, or Ming-Yuen Meyer-Fong, Assistant General Counsel, Office of General Counsel, (202) 649–3078, Federal Housing Finance Agency, 400 Seventh Street SW., Washington, DC 20024.

SUPPLEMENTARY INFORMATION:

I. Background

AMC Minimum Requirements

Section 1473 of the Dodd-Frank Act [1] added a new section 1124 to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 [2] (FIRREA) that established minimum requirements to be applied by States in the registration and supervision of AMCs. An AMC is an entity that serves as an intermediary for, and provides certain services to, creditors.[3] These minimum requirements apply to States that have elected to establish, pursuant to section 1117 of FIRREA,[4] an appraiser certifying and licensing agency with authority to register and supervise AMCs (participating States). Section 1473 of the Dodd-Frank Act [5] also requires the ASC to maintain an AMC National Registry, which will include AMCs that are either registered with, and subject to supervision by, a State appraiser certifying and licensing agency or are subsidiaries owned and controlled by a Federally regulated insured depository institution and regulated by a Federal financial institutions regulatory agency.[6] Section 1124(e) further requires the Agencies to promulgate regulations for the reporting of the activities of AMCs to the ASC in determining the payment of the annual fee for the AMC National Registry.[7]

Pursuant to FIRREA section 1124, the Agencies must establish, by rule, minimum requirements to be imposed by a participating State appraiser certifying and licensing agency on

[1] Public Law 111–203, 124 Stat. 1376.

[2] Public Law 101–73, 103 Stat. 183.

[3] The term ''appraisal management company'' is defined in more detail in section 1121(11) of Title XI of FIRREA, 12 U.S.C. 3350(11), and in § 34.211(c) of this final rule.

[4] 12 U.S.C. 3346.

[5] Hereafter, section references are to Title XI of FIRREA, unless otherwise noted.

[6] 12 U.S.C. 3332(a)(6).

[7] 12 U.S.C. 3353(e). *See also* FIRREA section 1109(a)(3), 12 U.S.C. 3338(a)(3) (requiring States to submit reports to the ASC concerning supervisory activities involving AMCs). This final rule does not implement section 1109(a)(3); this section of FIRREA is implemented by the ASC.

AMCs doing business in the State.[8] Specifically, pursuant to section 1124(a), participating States must require that AMCs: (1) Register with, and be subject to supervision by, the State appraiser certifying and licensing agency in the State or States in which the company operates; (2) verify that only State-certified or State-licensed appraisers are used for Federally related transactions;[9] (3) require that appraisals comply with the Uniform Standards of Professional Appraisal Practice (USPAP); and (4) require that appraisals are conducted in accordance with the statutory valuation independence standards pursuant to the Truth in Lending Act (TILA) (15 U.S.C. 1639e) and its implementing regulations.[10] An AMC that is a subsidiary owned and controlled by an insured depository institution and regulated by a Federal financial institutions regulatory agency is subject to all of the minimum requirements, except the requirement to register with a State.[11]

In participating States, the minimum requirements apply to any AMC that provides appraisal management services, as defined in the final rule, and meets the statutory panel size threshold, which is that the AMC oversees an appraiser panel of more than 15 State-certified or State-licensed appraisers in a State or 25 or more appraisers in two or more States in a calendar year or 12-month period under State law. States may establish requirements for AMC registration and supervision that are in addition to these minimum requirements.[12]

Pursuant to section 1124(f), beginning 36 months from the effective date of this final rule, an AMC that meets the statutory size threshold may not provide services for a Federally related transaction in a State unless the AMC is registered with the State or is subject to oversight by a Federal financial institutions regulatory agency.[13] This provision effectively allows each State up to three years to establish registration and supervision systems that meet the requirements of the final rule before AMCs in the State will be subject to the aforementioned restriction in the absence of such a regime. The ASC, with the approval of the FFIEC, may delay the restriction for an additional year if the ASC makes a written finding that a State has made substantial progress toward implementation of a system that meets the criteria in Title XI of FIRREA.[14] Even after the three-year implementation period has passed, a State may still elect to establish a regime, at which point AMCs operating in the State would be able to provide appraisal management services for Federally related transactions.

Section 1124 does not compel a State to establish an AMC registration and supervision program, nor is a penalty imposed on a State that does not establish a regulatory structure for AMCs within 36 months of issuance of this final rule.[15] However, in a State that has not adopted the AMC minimum requirements established by this rule, AMCs are barred by section 1124 from providing appraisal management services for Federally related transactions, unless they are owned and controlled by a Federally regulated depository institution.[16] Thus, appraisal management services may still be provided for Federally related transactions in non-participating States by individual appraisers, by AMCs that are below the minimum statutory panel size threshold, and as noted previously, by Federally regulated AMCs.[17]

On April 9, 2014, the Agencies published a proposed rule to implement the minimum requirements under FIRREA section 1124 for registration and supervision of AMCs, with a 60-day public comment period.[18] With certain changes to the proposed rule, this final rule implements the statutory requirements discussed above, as well as section 1124's requirements for the reporting of the activities of AMCs in determining the payment of the annual registry fee.[19] The final rule is being published in the Code of Federal Regulations separately by the OCC, the Board, the FDIC, and the FHFA. The Bureau is publishing a cross-reference to the OCC rule text in the valuation independence provisions of Regulation Z, 12 CFR 1026.42, to highlight that the final rule specifically reinforces the valuation independence standards. The rules are not different substantively. The implementation of the AMC minimum requirements does not affect the responsibility of banks, Federal savings associations, State savings associations, bank holding companies, and credit unions to ensure that appraisals for their institutions comply with applicable laws and regulations and are consistent with supervisory guidance. If these regulated financial institutions use an AMC to engage appraisers on their behalf, the AMC must be acting as an agent for these institutions.[20]

Consolidation of FDIC and OTS Rules on Appraisals

Title III of the Dodd-Frank Act transferred the powers, duties, and functions formerly performed by the Office of Thrift Supervision (OTS), the Federal entity formerly responsible for the supervision of Federally insured savings associations and their holding companies, to the FDIC for State savings associations and authorized the FDIC to consolidate OTS and FDIC rules.[21] The final rule implements this authority by rescinding the OTS regulatory provisions on appraisals pertaining to State savings associations, as these entities are now covered by the FDIC's appraisal rules.[22]

II. The Final Rule

The final rule: (1) Establishes the minimum requirements in section 1124 of FIRREA for State registration and supervision of AMCs in participating States; (2) requires Federally regulated AMCs to meet the minimum requirements of section 1124 (other than registering with the State); and (3) requires States to report certain AMC information to the ASC.[23] The final rule also integrates FDIC appraisal regulations for State nonmember banks and State savings associations.

For the reasons discussed in section III of this **SUPPLEMENTARY INFORMATION**,

[8] 12 U.S.C. 3353(a).

[9] Under FIRREA, a Federally related transaction is a real estate related financial transaction that involves an insured depository institution regulated by the OCC, Board, FDIC, or NCUA and that requires the services of an appraiser under the interagency appraisal rules. *See* 12 U.S.C. 3350(4), implemented by the OCC: 12 CFR 34.42(f) and 34.43(a); Board: 12 CFR 225.62(f) and 225.63(a); FDIC: 12 CFR 323.2(f) and 323.3(a); and NCUA: 12 CFR 722.2(f) and 722.3(a).

[10] 12 U.S.C. 3353(a). For regulations implementing TILA section 129E, 15 U.S.C. 1639e, *see* 12 CFR 226.42 (Board) and 12 CFR 1026.42 (Bureau).

[11] 12 U.S.C. 3353(c).

[12] 12 U.S.C. 3353(b).

[13] 12 U.S.C. 3353(f)(1).

[14] 12 U.S.C. 3353(f)(2).

[15] 12 U.S.C. 3353.

[16] *See* FIRREA section 1124(f)(1), 12 U.S.C. 3353(f)(1). Under section 1124(c), this restriction will not apply to AMCs that are subsidiaries owned and controlled by an insured depository institution and regulated by a Federal financial institutions regulatory agency. 12 U.S.C. 3353(c). Such AMCs are subject to all the requirements of section 1124, with the exception of the requirement to register with a State. *See id.*

[17] *See* FIRREA section 1121(11), 12 U.S.C. 3350(11).

[18] 79 FR 19521 (Apr. 9, 2014).

[19] 12 U.S.C. 3353(e). *See also* 12 U.S.C. 3338(a)(4) (setting out the fee structure for the AMC National Registry).

[20] *See* OCC: 12 CFR 34.45(b)(1); Board: 12 CFR 225.65(b)(1); FDIC: 12 CFR 323.5(b)(1); and NCUA: 12 CFR 722.5(b)(1).

[21] The OTS was abolished on October 19, 2011, pursuant to the Dodd-Frank Act.

[22] Title III of the Dodd-Frank Act transferred supervision of Federal savings associations to the OCC. The OCC recently integrated the OTS and OCC rules on appraisals. *See* 79 FR 28393 (May 16, 2014) (integrating certain interagency rules for national banks and Federal savings associations).

[23] *See* 12 U.S.C. 3353(a), (c), and (e).

the final rule adopts the rule substantially as proposed, with modifications to: (1) Provide that the standard for determining whether an appraiser is an independent contractor will be based on how the appraiser is treated for Federal income taxes, as determined under Internal Revenue Service (IRS) guidance; (2) clarify that an AMC credit union service organization (CUSO) is not considered to be a Federally regulated AMC, and therefore would be regulated by the State or States in which the AMC CUSO operates; (3) clarify that the rule does not bar the use of trainee appraisers; (4) provide that the registration limitations on individuals who have had their licenses refused, denied, cancelled, surrendered in lieu of revocation, or revoked, should not be construed to apply to appraisers whose licenses have been revoked for nonsubstantive reasons, as determined by the appropriate State appraiser certifying and licensing agency and whose licenses have been subsequently reinstated; (5) revise the provision on reporting of information by Federally regulated AMCs to clarify that Federally regulated AMCs will report information required for the AMC National Registry directly to the States; and (6) remove cross-references to provisions of Regulation Z, 12 CFR part 1026 (Truth in Lending), in the proposed definitions. The Agencies are generally adopting the relevant text of the cross-referenced Regulation Z provisions, in lieu of the cross-references. The final rule also contains technical, nonsubstantive changes.

III. The Final Rule and Public Comments on the Proposed Rule

The following is a section-by-section review of the proposed rule and a discussion of the public comments received by the Agencies concerning the proposal. The Agencies received 256 comment letters containing 89 unique comments in response to the published proposal. These comment letters were received from State appraiser certifying and licensing agencies, AMCs, appraiser trade and professional associations, appraisal firms, appraisers, financial institutions, consumer/community groups and individual commenters. For ease of reference, unless otherwise noted, the **SUPPLEMENTARY INFORMATION** refers to section numbers in the proposed and final rule texts for the OCC, 12 CFR 34.210 *et seq.* Rule text for the other Agencies is published separately in this **Federal Register** notice at 12 CFR 208.50 and 225.190 *et seq.* (Board); 12 CFR 323.8 *et seq.* (FDIC); and 12 CFR 1222.20 *et seq.* (FHFA).

A. Section 34.211. Definitions

The Agencies requested comment on the key definitions in the proposed rule. The following is a discussion of these key definitions, related public comments, and issues relating to those definitions. Definitions on which the Agencies did not receive comment are not discussed below and are adopted without change in the final rule.

1. Cross-References to Other Regulations

The Agencies are adopting changes to definitions for which cross-references to Regulation Z, 12 CFR part 1026, were used in the proposed rule. Specifically, the Agencies are removing most cross-references and adopting the relevant text of the cross-referenced provisions directly (*see* § 34.211(g) (defining ''consumer credit''), § 34.211(i) (defining ''creditor''), and § 34.211(m) (defining ''person''). In addition, the Agencies are defining the term ''dwelling'' in § 34.211(j) by adopting the text of the definition of ''dwelling'' in 12 CFR 1026.2(a)(19), which was included in the proposed definition of ''principal dwelling'' (*see* proposed § 34.211(m)). In new § 34.211(j)(2), the Agencies are retaining the explanation of ''principal dwelling'' that was provided in the proposed rule.[24] (*See* proposed § 34.211(m)). This explanation is based on Official Interpretation 12 CFR 1026.2(a)(24)–3. The Agencies are adopting these changes in the final rule to simplify the rule and relieve regulatory burden on States. Substituting the text of these definitions for cross-references mitigates the potential obligations of States to update, clarify, or amend State law or its interpretations as Regulation Z is amended over time, or if the numbering of definitions in Regulation Z changes.[25]

2. Section 34.211(c): Appraisal Management Company; Section 34.211(d): Appraisal Management Services

Proposed § 34.211(c) defined an AMC as a person that: (1) Provides appraisal management services to creditors or secondary mortgage market participants; (2) provides these services in connection with valuing the consumer's principal dwelling as security for a consumer credit transaction (including consumer credit transactions incorporated into securitizations); and (3) within a given year, oversees an appraiser panel of more than 15 State-certified or State-licensed appraisers in a State or 25 or more State-certified or State-licensed appraisers in two or more States. The proposed definition cross-referenced proposed § 34.212 for the rules on how to calculate the numeric threshold for the appraiser panel.

Proposed § 34.211(d) defined ''appraisal management services,'' which is a key component of the definition of ''appraisal management company,'' to mean one or more of the following: (1) Recruiting, selecting, and retaining appraisers; (2) contracting with State-certified or State-licensed appraisers to perform appraisal assignments; (3) managing the process of having an appraisal performed, including providing administrative duties such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and secondary mortgage market participants, collecting fees from creditors and secondary mortgage market participants for services provided, and paying appraisers for services performed; and (4) reviewing and verifying the work of appraisers. This definition is consistent with the appraisal management services outlined in the definition of AMC in section 1121.[26] As in section 1121, the proposed definition of appraisal management services did not include performing appraisals, nor does the definition of appraisal management services adopted in this final rule.[27]

a. Commercial Transactions and the Definition of AMC

Consistent with the statutory definition of AMC, the proposed definition of AMC applied to appraisal management services provided in connection with residential mortgage transactions secured by the consumer's principal dwelling and securitizations involving those mortgages. The proposed rule did not extend to appraisal management services provided in connection with commercial real estate transactions or securitizations involving commercial real estate mortgages.[28]

In drafting the definition of AMC for the proposal, the Agencies considered whether the statutory definition of AMC in section 1121 should be construed to

[24] *See* proposed §§ 34.211(m) and 34.211(j)(2).

[25] These changes also should avoid any inadvertent confusion created by referring to Regulation Z, which includes additional exemptions that are not included in these regulations, such as for transactions meeting the Regulation Z definition of consumer credit transaction secured by a principal dwelling, but used to purchase a 3–4 unit owner-occupied rental property.

[26] *See* 12 U.S.C. 3350(11).

[27] *See id.*

[28] 12 U.S.C. 3350(11).

encompass not only appraisal management services provided for securitizations of consumer purpose residential mortgages, but also appraisal services in connection with securitizations of commercial mortgages.[29] The Agencies proposed the former. The Agencies' reading of the statute—that it extends only to consumer purpose residential mortgage transactions and securitizations of those mortgages—is consistent with the text of section 1124 and with the Dodd-Frank Act as a whole.[30] Non-residential or commercial mortgages are not mentioned in any AMC provisions in section 1473 of the Dodd Frank Act (or elsewhere in Title XIV of the Dodd-Frank Act). The lack of a reference to commercial mortgage lending in the relevant Dodd-Frank Act provisions suggests that AMCs were not intended to be covered by the AMC minimum requirements when they are providing appraisal management services for underwriters or other principals in commercial mortgage securitizations. Moreover, the Agencies understand that individual appraisers, as opposed to AMCs, are more typically retained to provide an appraisal of properties securing commercial mortgage loans (and securitizations of such loans) because of the size and complexity of those properties. This understanding is based on the supervisory experience of the Agencies as well as outreach during the proposed rule process to a trade association for AMCs and an individual AMC, which confirmed that, under the current business model, AMCs do not generally provide services in connection with commercial mortgages.

The Agencies received a small number of comments concerning whether an AMC's services for commercial mortgage transactions should be covered by the final rule. Several commenters supported the proposal to exclude commercial real estate transactions from the definition of AMC. One commenter disagreed, stating that both commercial and consumer transactions should be covered by the rule, but did not elaborate.

The Agencies continue to believe that commercial real estate transactions should be excluded from the definition of AMC based on the reasons outlined above. As such, the definition of AMC in the final rule includes entities only when they are providing appraisal management services for consumer mortgage transactions secured by the consumer's principal dwelling and securitizations of those loans.

b. ''External Third Party'' Within the Definition of AMC

Section 1121 defines an AMC as any ''external third party'' authorized to take certain actions by a creditor of a consumer credit transaction secured by the consumer's principal dwelling or by an underwriter of or other principal in the secondary mortgage markets.[31] Consistent with the statutory definition, the proposal defined the term ''appraisal management company'' to exclude a department or division of an entity if the department or division provides appraisal management services only to that entity. This reflects the Agencies' interpretation that a department or a division of an entity is not an ''external third party'' as required by the statute. Under the proposed rule, an AMC that is an affiliate (rather than a department or division) of a creditor or secondary market principal would, however, be treated as an AMC, even if the AMC provides appraisal management services only to the entity with which it is affiliated, because the affiliate is a separate legal entity.

The Agencies believe that this interpretation of the term ''external third party'' is consistent with the plain meaning of ''external'' and ''third party,'' as well as with section 1124(c), which provides that the requirements of section 1124 would apply to AMCs that are owned and controlled by financial institutions.[32] In the Agencies' view, this interpretation is also consistent with section 1124 as a whole, which is directed at regulating parties that provide appraisal management services on behalf of creditors and secondary market principals, but does not regulate creditors or secondary market principals directly.[33]

The Agencies received one comment on this topic, which supported the exclusion of departments and divisions from the definition of AMC. The Agencies are adopting in the final rule the proposed approach to ''external third party.''

c. Uniformity and the Definition of AMC

The Agencies received a number of comments suggesting that the Agencies require all participating States to adopt the definition of AMC in the proposed rule. Several commenters also stated that reducing burden for AMCs would reduce costs for consumers. As a legal basis for this position, one commenter noted that the definition of AMC is statutory, and therefore should be binding on all the participating States.

The Agencies agree that the definition of AMC in section 1121 sets the uniform minimum standards for assessing whether an entity is an AMC under this rule.[34] Under the proposed rule, a participating State would be required to treat an entity as an AMC if the entity provides services described in the definition and meets the statutory panel size threshold. As such, pursuant to section 1121 and the proposed rule, a participating State could not revise the definition of AMC to eliminate or limit the range of services that would classify an entity as an AMC with respect to the minimum requirements in the rule. Similarly, a State could not void the statutory panel size threshold that triggers the minimum requirements by, for example, adopting an AMC law that provides that an entity is an AMC only if it has 50 or more appraisers on its nationwide panel.[35] Thus, all States electing to establish an AMC regulatory program under the rule would have a uniform minimum scope as to coverage of their program.

While the Agencies understand the commenters' desire for uniformity, FIRREA section 1124(b) recognizes expressly the authority of States to adopt requirements in addition to those in the final rule: ''Nothing in this section [1124] shall be construed to prevent States from establishing requirements in addition to any rules promulgated under subsection(a)[by the Agencies].''[36] Therefore, the Agencies decline to require all participating States to adopt a uniform definition of AMC.

d. ''Portals'' Within the Definition of AMC

The Agencies received one comment from an entity that provides appraisal related services through electronic mechanisms, described as a ''portal'' business model. The commenter requested that the Agencies address the question of whether a portal is an AMC.

The Agencies do not support a categorical rule in this regard. The business model an entity uses to provide services should not be

[29] While it is clear that the definition of AMC encompasses only residential mortgage loans, there is some question as to whether the definition includes securitizations of commercial mortgages.

[30] 12 U.S.C. 3353.

[31] 12 U.S.C. 3350(11).

[32] 12 U.S.C. 3353(c).

[33] 12 U.S.C. 3353.

[34] 12 U.S.C. 3350(11). This rule establishes ''minimum'' requirements for a State to apply in registering AMCs. Thus, the Agencies interpret the rule of construction in FIRREA section 1124(b) to recognize that States may adopt requirements that exceed those in the rule, for example, defining AMC to cover more entities than would be covered under the minimum requirements of this rule. 15 U.S.C. 3353(b).

[35] 12 U.S.C. 3350(11).

[36] 12 U.S.C. 3353(b).

determinative of whether the entity is an AMC; rather, if a portal is providing appraisal management services, and meets the other elements of the definition, then it should be considered an AMC under the final rule. Thus, the final rule does not limit or affect the discretion of States to treat a portal as an AMC if a State finds that a portal provides appraisal management services.

e. Distinction Between AMCs and Appraisal Firms

In the proposal, the Agencies addressed whether appraisal firms should be considered AMCs pursuant to sections 1124 and 1121(11) [37] and requested comment on whether the distinction between employees and independent contractors served as a basis for excluding appraisal firms from the definition of an AMC. (*See* Question 3 in the proposal.) The technical distinction between independent contractors and employees, for purposes of determining whether an entity meets the statutory panel size thresholds, is addressed in the section-by-section analysis of § 34.212 (Appraiser Panel), which discusses how to calculate the number of appraisers on a panel. The following is a discussion of the comments on the broader issue of whether the proposal appropriately excluded appraisal firms from the scope of the rule.

A number of commenters supported the proposal to construe section 1124 as applying only to AMCs or hybrid entities (discussed in detail below) and not to appraisal firms. These commenters stated that the business models of AMCs and appraisal firms are different. Under the different business models, according to these commenters, employees of appraisal firms perform appraisals, while AMCs contract for appraisal services, but do not perform appraisals. Another set of commenters argued that appraisal firms should be covered by the rule. The basis for this argument was the commenters' assertion that there is no substantive distinction between AMCs, which hire others to perform appraisals, and appraisal firms, which generally hire appraisers as employees.

As discussed in the preamble to the proposed rule, the Agencies interpret section 1124 to distinguish between AMCs and appraisal firms for three key reasons.[38] First, the distinction between appraisal firms and AMCs is reflected in section 1472 of the Dodd-Frank Act, which added provisions concerning valuation independence to TILA.[39] These provisions contemplate expressly that certain entities would not be covered by the AMC minimum requirements in FIRREA section 1124 and describe this type of entity, in pertinent part, as one that ''utilizes the services of State licensed or certified appraisers *and receives a fee for performing appraisals* in accordance with the Uniform Standards of Professional Appraisal Practice.'' [40] The Agencies understand that the type of entity described here as excluded from the AMC minimum requirements is an appraisal firm, which receives fees for directly performing appraisals. Second, FIRREA section 1124 uses the term ''appraisal management company,'' and not appraisal firm.[41] Third, section 1121(11) describes the activities of AMCs as including ''contracting with State-certified or State-licensed appraisers to perform appraisal assignments,'' but not directly performing appraisals.[42] Section 1121(11) also defines an AMC as an entity that ''oversees a network or panel of more than 15 certified or licensed appraisers in a State or 25 or more nationally (meaning two or more States) within a given year . . .'' [43] By contrast, the Agencies understand that appraisal firms perform appraisals as a primary function directly through employees and do not oversee a ''network or panel'' of non-employee appraisers.

As stated in the proposal, the Agencies believe that the fundamental reasons to distinguish between AMCs and appraisal firms are that the business models of AMCs and appraisal firms are different and that Congress expressed an intention to exclude entities operating on an appraisal firm model from coverage by the AMC minimum requirements. This conclusion is consistent with the fact that AMCs provide appraisal management services to third parties, including retaining appraisers to perform appraisals, but AMCs do not perform appraisals. By contrast, appraisal firms perform appraisals using one or more of the firm's employees or partners. In addition, appraisal firms typically hire a limited number of appraisers, based on identified need, and hire inexperienced trainees and train them to become qualified appraisers. AMCs, on the other hand, generally have a large number of pre-approved appraisers in their network or panel who are available, as independent contractors, for potential assignments and do not conduct training for inexperienced appraisers.

f. Hybrid Entities

In the proposal, the Agencies discussed the possibility that there are, or may be in the future, ''hybrid'' entities, meaning entities that both hire appraisers as employees to perform appraisals and engage independent contractors to perform appraisals. In this situation, the entity could be considered both an AMC and an appraisal firm. As such, under the proposed rule, the hybrid entity would be treated as an AMC for purposes of State registration if it meets the statutory panel size threshold (of overseeing more than 15 State-certified or State-licensed appraisers in a State or 25 or more State-certified or State-licensed appraisers in two or more States within a given year). Under the proposal, the numerical calculation of panel size for hybrid entities would only include appraisers engaged as independent contractors.

Some commenters supported the proposed treatment of firms that have both employee appraisers and independent contractor appraisers. One commenter suggested that the Agencies should not recognize a hybrid firm as a valid business model, but did not elaborate. The Agencies adopt in the final rule the proposed definition of AMC and the proposed treatment of hybrid firms. The Agencies continue to believe that sections 1124 and 1121(11) are best interpreted to apply only to AMCs, as defined in the proposed and final rules, and not to appraisal firms (with the exception of hybrid firms). In addition to the statutory distinction between appraisal firms and AMCs, the Agencies believe this interpretation is consistent with, and supported by, the key distinction between AMCs and appraisal firms—that the former contracts with appraisers to perform appraisals, while the latter performs appraisals directly through employees. Even if some services provided by AMCs and appraisal firms overlap, which some commenters assert, this key difference between the two entities (that AMCs contract with appraisers to perform appraisals and appraisal firms perform appraisals directly through their own employees) remains. The final rule also reflects the definition of ''appraisal management company'' in

[37] 12 U.S.C. 3353 and 3350(11).

[38] 12 U.S.C. 3353.

[39] *See* TILA section 129F, 15 U.S.C. 1639e.

[40] 15 U.S.C. 1639e(i)(2) (emphasis added); *see also* 12 U.S.C. 3353. A ''fee appraiser'' is defined in TILA section 129E, 15 U.S.C. 1639(e)(i), as a person who: (1) Is not an employee of a loan originator or AMC engaging the appraiser; (2) performs an appraisal in compliance with USPAP; and (3) is a company [an appraisal firm] not subject to the requirements of section 1124 (minimum requirements for AMCs, 12 U.S.C. 3353) and that receives a fee for performing appraisals.

[41] *Id.*

[42] 12 U.S.C. 3350(11).

[43] 12 U.S.C. 3350(11).

section 1121(11), which provides that an AMC is an entity that ''oversees a network or panel'' of appraisers.[44] Appraisal firms do not oversee networks or panels of non-employee appraisers.

The Agencies also continue to believe that recognition of hybrid firms as AMCs is appropriate when the entity maintains a panel of appraisers that includes independent contractors meeting the threshold minimum numbers pursuant to § 34.212. The Agencies believe that this interpretation of the definition of AMC is consistent with the statutory language and purpose, appropriately reflects the business models of AMCs, and accommodates the possibility that appraisal firms may evolve over time. For these reasons, the Agencies adopt in the final rule the proposed definition of AMC and the proposed treatment of hybrid firms.

3. Section 34.211(e) Appraiser Panel

The Agencies are adopting the proposed definition of ''appraiser panel'' with minor clarifications. Specifically, proposed § 34.211(e) defined an appraiser network or panel as a network of State-licensed or State-certified appraisers who are independent contractors to an AMC. In the final rule, ''appraiser panel'' is defined as a network, list or roster of licensed or certified appraisers approved by the AMC to perform appraisals as independent contractors for the AMC. Appraisers on an AMC's ''appraiser panel'' under this part include both appraisers accepted by the AMC for consideration for future appraisal assignments and appraisers engaged by the AMC to perform one or more appraisals. The final rule also clarifies in the definition of ''appraiser panel'' that an appraiser is an independent contractor for purposes of this rule if the appraiser is treated as an independent contractor by the AMC for purposes of Federal income taxation.

a. Distinction Between Employees and Independent Contractors in Determining Panel Membership

The definition of ''appraisal management company'' in section 1121(11) provides that an entity will be treated as an AMC subject to State registration if it has an ''appraiser network or panel'' of more than 15 State-certified or State-licensed appraisers in a State or 25 or more appraisers nationally (meaning two or more States) within a given year.[45] Section 1121(11) does not specify whether a ''network or panel'' consists of employees of an AMC or independent contractors retained by the AMC (or both). However, by including only independent contractors with the AMC, the proposed and adopted definition of ''appraiser panel'' reflects the approach taken by the majority of States that have adopted AMC registration laws or have proposed AMC laws[46] and reflects the Agencies' understanding that AMCs typically engage appraisers as independent contractors under the current AMC business model.[47] Section 34.211(e) also reflects the definition of AMC in section 1121(11), which outlines typical tasks carried out by AMCs, including as ''contract[ing] with licensed and certified appraisers.''[48] As discussed above in the section-by-section analysis of § 34.211(c), the definition of AMC and its description of appraisal management services does not include directly performing appraisals through the AMC's own employees—rather, AMCs contract with external third parties to perform appraisals.[49]

The method for calculating whether an entity has an ''appraiser network or panel'' of more than 15 State-certified or State-licensed appraisers in a State or 25 or more appraisers nationally (meaning two or more States) within a calendar year or 12-month period under State law is discussed further under the section-by-section analysis of § 34.212, below.

The Agencies requested comment on the proposed definition of ''appraiser panel'' and on the alternative of defining this term to include employees as well as independent contractors. (*See* Question 2 in the proposal.) Some commenters argued that employees as well as independent contractor appraisers should be counted as part of an appraiser network or panel. These commenters did not disagree with the Agencies' understanding that AMCs generally use independent contractors rather than employee appraisers. Nor did the commenters address the key distinction between AMCs and appraisal firms, which is that AMCs primarily engage third parties to perform appraisals, whereas appraisal firms perform appraisals directly through employees.

As discussed above in the section-by-section analysis of § 34.211(c), the commenters argued that appraisal firms should be regulated as AMCs as a matter of policy. As such, these commenters suggested that the distinction between employee and independent contractor appraisers be removed from the rule. In support of this position, the commenters stated that appraisal firms and AMCs provide substantially the same services, and therefore should both be covered by the AMC registration and supervision programs.

Other commenters agreed with the employee-independent contractor distinction, stating that defining ''appraiser panel'' to be comprised only of independent contractor appraisers reflects the difference between the AMC and appraisal firm business models. Specifically, these commenters stated that appraisal firms' employees perform appraisals directly, while AMCs provide appraisal management services and engage third-party appraisers to perform appraisals.

The Agencies adopt in the final rule the proposed definition of ''appraiser panel,'' which includes only appraisers who are independent contractors to an AMC. The Agencies note the predominance of comments in favor of retaining the employee-independent contractor distinction. The final rule also reflects that the commenters who opposed the proposed employee-independent contractor distinction effectively conceded that the distinction is accurate, arguing instead that AMCs and appraisal firms should both be regulated as AMCs under section 1124 and implementing State laws, regardless of the way these entities structure their operations.[50] This larger policy question is addressed above in the discussion of the distinction between employees and independent contractors as a basis for exclusion of an appraisal firm from the definition of an AMC. *See* the section-by-section analysis of § 34.211(c)

[44] 12 U.S.C. 3350(11).

[45] 12 U.S.C. 3350(11).

[46] A majority of States with AMC laws define ''appraiser panel'' as being comprised of independent contractors. *See, e.g.,* N.C. Gen. Stat. section 93E–2–2 (defining an appraiser panel as a network or panel of appraisers who are independent contractors to the AMC); Vernon's Tex. Code Ann. Occupations Code section 1104.003(b)(3) (same); Louisiana La. Rev. Stat. Ann. section 37:3415.2(a) (same); *see also* Ohio (draft code) (same). A minority of States use a broader definition for ''appraiser panel'' that encompasses a combination of independent contractors and employees. *See, e.g.,* Cal. Bus. & Prof. Code section 11302 (defining AMC to include both independent contractors and employees); Ark. Code Ann. section 17–14–402(2) (same); Ky. Rev. Stat. section 324A.150(2)(same). The majority approach is consistent with the model AMC code offered by a trade association for appraisers and the minority approach is consistent with a model code offered by a trade association for AMCs.

[47] As discussed in the proposal, this understanding is based on outreach conducted by the Agencies with associations that represent AMCs and appraisers, as well as outreach with State appraiser certifying and licensing agencies.

[48] 12 U.S.C. 3350(11).

[49] The Agencies will monitor AMCs to assess whether they are hiring appraisers as part-time employees to avoid State registration requirements. Outreach with State officials before the issuance of the proposed rule did not indicate this is currently occurring or at significant risk of occurring.

[50] 12 U.S.C. 3353.

(definition of AMC), above. Moreover, the treatment of hybrid firms will help address the potential that a firm may try to avoid the requirements of the rule by using a combination of appraisers who are employees and appraisers who are independent contractors.

b. Definition of Independent Contractor

The Agencies requested comment on whether the term ''independent contractor'' should be defined, and if so why and how, including whether it should be defined based on Federal law by using the standards or guidance issued by the IRS or standards adopted in other Federal regulations, such as those issued under the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act),[51] or left to State law. (*See* Question 2 in the proposal.) A number of commenters requested that the final rule include a definition of independent contractor, or that the rule incorporate an external definition, for example, IRS guidance on the employee-independent contractor distinction or the definition of independent contractor in the SAFE Act. In addition, these commenters stated that it would be desirable to have a standard for independent contractor that applies in all participating States. The commenters stated a preference for using IRS guidance for this purpose. One commenter disagreed, suggesting that a single definition of the term independent contractor is not needed.

The Agencies believe that additional guidance on the meaning of ''independent contractor'' under the final rule facilitates compliance and, therefore, are amending the proposed definition of appraiser panel accordingly. As noted, the definition of appraiser panel in § 34.211(e) provides that that an appraiser is deemed an ''independent contractor'' for purposes of this rule if the appraiser is treated as such by the AMC for purposes of Federal income taxation.[52]

4. Section 34.211(h): Covered Transaction

Proposed § 34.211(h) defined a covered transaction as any consumer credit transaction secured by the consumer's principal dwelling. The proposed definition did not limit the definition of ''covered transaction'' to Federally related transactions (generally, credit transactions involving a Federally regulated depository institution, *see* 12 U.S.C. 3350(4)), even though Title XI of FIRREA and its implementing regulations have applied historically only to appraisals for Federally related transactions.

As stated in the proposed rule, defining ''covered transaction'' to include all consumer credit transactions secured by the consumer's principal dwelling reflects the statutory text of section 1121(11), which defines the term ''appraisal management company,'' as in pertinent part, ''any external third party authorized either by a creditor of a consumer credit transaction secured by the consumer's principal dwelling or by an underwriter of or other principal in the secondary mortgage markets.'' [53]

Applying coverage of the AMC rule beyond Federally related transactions is consistent with the structure and text of other parts of section 1124, most of which address appraisals generally rather than appraisals only for Federally related transactions. For example, section 1124(a)(2) specifies that only licensed or certified appraisers are to be used for ''federally related transactions,'' but sections 1124(a)(3) and (a)(4) apply to ''appraisals'' generally.[54] In particular, the text of section 1124(a)(4) indicates that one of the chief purposes of the minimum requirements for AMCs is to ensure compliance with the valuation independence standards established pursuant to section 129E of TILA.[55] Those standards apply to AMCs whenever they engage in a consumer credit transaction secured by the consumer's principal dwelling, regardless of whether the transaction is a Federally related transaction.[56]

For these reasons, the proposed rule provided that the minimum requirements in participating States would apply to *all* entities that meet the definition of AMC in providing appraisal management services related to consumer credit transactions secured by the consumer's principal dwelling for both Federally related transactions and non-Federally related transactions.

The Agencies received one comment that supported the proposed definition of ''covered transaction.'' The Agencies are adopting it in the final rule as proposed. As such, a covered transaction is defined to mean any consumer credit transaction secured by the consumer's principal dwelling. For the reasons discussed above in describing the proposed definition, the Agencies have determined the final rule should not limit the definition of ''covered transaction'' to consumer credit transactions secured by the consumer's principal dwelling that are Federally related transactions.

5. Section 34.211(k): Federally Regulated AMCs

Section § 34.211(k) defines a ''Federally regulated AMC'' as an AMC that is owned and controlled by an insured depository institution, as defined in 12 U.S.C. 1813, or an insured credit union, as defined in 12 U.S.C. 1752, and regulated by the OCC, the Board, the NCUA, or the FDIC. This definition differs from the proposed definition only in that the reference to the NCUA is removed, for reasons discussed below.

Under section 1124(c), an AMC that is a subsidiary owned and controlled by an insured depository institution or an insured credit union and regulated by a Federal financial institutions regulatory agency [57] is not required to register with a State.[58] Proposed § 34.211(j) defined an entity of this type as a ''Federally regulated AMC,'' meaning an AMC that is owned and controlled by an insured depository institution, as defined in 12 U.S.C. 1813, or an insured credit union, as defined in 12 U.S.C. 1752, and regulated by the OCC, the Board, the NCUA, or the FDIC. Under section 1124(c), a Federally regulated AMC must follow the minimum requirements that are applicable to a State-registered AMC (other than the requirement to register with a State) and is subject to supervision for compliance with these requirements by the appropriate Federal financial institutions regulatory agency. In addition, under section 1124(e), as

[51] 12 CFR 1008.23 (''*Independent contractor* means an individual who performs his or her duties other than *at the direction of and subject to the supervision and instruction of* an individual . . .'') (emphasis added). The SAFE Act was enacted as part of the Housing and Economic Recovery Act of 2008, Pub. L. 110–289, Division A, Title V, sections 1501–1517, 122 Stat. 2654, 2810–2824 (July 30, 2008), *codified at* 12 U.S.C. 5101–5116.

[52] For guidance on how to determine whether an appraiser is an employee or independent contractor, *see* IRS Publication 1779, ''Independent Contractor or Employee,'' *available at http://www.irs.gov/pub/irs-pdf/p1779.pdf* and IRS Publication 15–A, ''Employer's Supplemental Tax Guide,'' at p. 7 *et seq.* (discussing factors for distinguishing employees from independent contractors), *available at http://www.irs.gov/pub/irs-pdf/p15a.pdf.*

[53] 12 U.S.C. 3350(11).

[54] *See* 12 U.S.C. 3353(a)(2) (3) and (4).

[55] 12 U.S.C. 3353(a)(4).

[56] *See* 15 U.S.C. 1639e(a) (defining scope); 12 CFR 1026.42(b)(1)–(2) (implementing regulations defining scope).

[57] The term ''Federal financial institutions regulatory agencies'' means the Board, the FDIC, the OCC, the former OTS, and the NCUA. 12 U.S.C. 3350(6). Title III of the Dodd-Frank Act provides that the OCC is now the Federal financial institutions regulatory agency for Federal savings associations. Title III of the Dodd-Frank Act also provides that the FDIC is the Federal financial institutions regulatory agency for State savings associations. Finally, the Dodd-Frank Act provides that the Board is responsible for regulation of savings and loan holding companies.

[58] 12 U.S.C. 3353(c).

implemented by the proposed rule, AMCs, including Federally regulated AMCs, must report to the participating State or States in which they operate the information required to be submitted by the State to the ASC for administration of the AMC National Registry. These requirements are discussed further in the section-by-section analysis of § 34.215, below.

In the proposal, the Agencies discussed whether an AMC that is a subsidiary owned and controlled by a credit union (credit union service organization or ''CUSO'') would be considered a Federally regulated AMC, and thus exempt from State registration and supervision. The Agencies indicated that an AMC, even if owned and controlled by a credit union, would not be a Federally regulated AMC because the NCUA, unlike the other banking agencies involved in this rulemaking, does not directly oversee or regulate CUSOs. Instead, the authority that the NCUA exercises over CUSOs is through its regulations that permit Federal credit unions to invest in, or lend to, CUSOs.[59] For these reasons, under the proposed rule, if an AMC were owned and controlled by a credit union (whether owned by a State or Federally chartered credit union) it would not be considered to be regulated by a Federal financial institutions regulatory agency. As such, the AMC CUSO would be required to be registered in accordance with applicable State requirements in participating States.[60]

The Agencies requested comment on whether references to the NCUA and insured credit unions should be removed from the definition of ''Federally regulated AMC'' and other parts of the final rule to clarify that an AMC CUSO would be subject to State registration and supervision. (*See* Question 4 in the proposal.) Some commenters expressed concern that the references to the NCUA and credit unions in the proposed regulatory text were confusing and suggested that removing these references in the final rule would clarify that AMC CUSOs are subject to State registration and supervision.

To provide clarification in the final rule, the Agencies removed references to NCUA and credit unions from pertinent portions of the regulatory text defining ''Federally regulated AMC.'' An AMC owned and controlled by a credit union (whether owned by a State or Federally chartered credit union) is not considered to be regulated by a Federal financial institutions regulatory agency under the final rule. As such, AMC CUSOs are required to register in accordance with applicable State requirements.

6. Section 34.211(n): Secondary Mortgage Market Participant

In the proposed rule, the Agencies defined ''secondary mortgage market participant'' to implement the statutory definition of AMC, which refers to an entity that performs services authorized by ''an underwriter of or other principal in the secondary mortgage markets.''[61] Proposed § 34.211(n) defined ''secondary mortgage market participant'' to mean a guarantor or insurer of mortgage-backed securities, or an underwriter or issuer of mortgage-backed securities. The definition included individual investors in a mortgage-backed security only if they also serve in the capacity of a guarantor, insurer, underwriter, or issuer for the mortgage-backed security.

Most commenters supported the proposed definition of ''secondary mortgage market participant.'' Some commenters indicated that the definition is clear and needs no further additions or clarifications at this time, but could at some future date to reflect evolving conditions. One commenter believed that the definition is sufficiently understandable for States to be able to write statutes and rules to enforce the intent of the rule. Another commenter suggested that the definition of ''secondary market participant'' is too narrow, and that any bank or creditor involved in lending Federally insured funds in a transaction secured by real estate (commercial or residential) should be considered a secondary market participant.

Commenters did not provide any specific suggestions for revising the proposed definition of secondary mortgage market participant. As with other aspects of the proposed rule, the Agencies understand that changes in the marketplace may, at some point, require the Agencies to amend the final rule, or may require States to amend or re-interpret State laws. The Agencies continue to believe, however, that the definition of secondary mortgage market participant is accurate at present. Regarding the comment that banks or creditors lending Federally insured funds should be included, the Agencies note that the statutory definition of AMC distinguishes between ''creditors'' and ''secondary mortgage market participants,''[62] and therefore believe that including originating banks or creditors in the definition of ''secondary mortgage market participants'' would be inconsistent with this distinction in the statutory definition. The Agencies in the final rule adopt the proposed definition of secondary mortgage market participant.

B. Section 34.212: Appraiser Panel—Annual Size Calculation

1. Determining Appraiser Panel

Section 34.212 finalizes proposed § 34.212 without change, other than revising the title from ''Appraiser Panel'' to ''Appraiser Panel—Annual Size Calculation,'' for clarity. Section 34.212 sets out criteria for determining whether, within a calendar year or 12-month period specified by State law, an AMC oversees an appraiser panel of more than 15 State-certified or State-licensed appraisers in a State or 25 or more State-certified or State-licensed appraisers in two or more States. Consistent with the proposal, pursuant to § 34.212(a), an appraiser is deemed part of the AMC's appraiser panel as of the earliest date the AMC accepts the appraiser for consideration for future appraisal assignments in covered transactions or engages the appraiser to perform one or more appraisal assignments on behalf of a creditor or secondary mortgage market participant in a covered transaction, including an affiliate of such a creditor or participant. Also consistent with the proposal, pursuant to § 34.212(b), an appraiser who is considered to be part of the AMC's appraiser panel is deemed to remain on the panel until: (1) The date on which the AMC sends written notice to the appraiser removing the appraiser from the appraiser panel; (2) the date the AMC receives written notice from the appraiser asking to be removed from the appraiser panel; or (3) the date the AMC receives notice of the death or incapacity of the appraiser. If an appraiser is removed from an AMC's appraiser panel, but the AMC subsequently accepts the appraiser for consideration for future assignments or engages the appraiser at any time during the twelve months after the appraiser's removal, the removal would be deemed not to have occurred, and the appraiser would be deemed to have been part of the AMC's appraiser panel without interruption. The Agencies included

[59] *See* 12 CFR part 712 (outlining requirements relating to credit union investments in CUSOs).

[60] As noted in the preamble to the proposed rule, the NCUA has not, historically, asserted that CUSOs or their employees are exempt from applicable State registration and licensing regimes. *See* 75 FR 44656, 44659 (applying similar reasoning to the licensing of mortgage loan originators who were employees of CUSOs under the SAFE Act.

[61] 12 U.S.C. 3350(11).

[62] 12 U.S.C. 3350(11).

these procedural provisions to give States clarity and prevent circumvention of the registration requirement.

The Agencies received a wide variety of comments relating to the calculation of appraiser panel membership under Question 2 of the proposal. Some commenters suggested that the approach in the proposal, which would count appraisers either engaged to perform appraisals or pre-approved to do so, would result in the unintended consequence of limiting the number of appraisers in AMC networks or panels. These commenters argued that pre-approved appraisers who have not yet been engaged by the AMC for an assignment should not be counted. They argued that the proposed method of counting appraisers would provide a strong incentive for AMCs to limit significantly the size of networks or panels, given that the AMC National Registry fee will be determined based on the number of appraisers on an AMC's network or panel of appraisers. The commenters stated that, to reduce costs, AMCs would likely reduce the size of appraiser panels if the proposed method of counting appraisers were adopted as final.

As background, the commenters explained that AMCs maintain large panels of pre-approved appraisers in order to offer timely appraisal services in a wide variety of areas, including smaller communities and rural areas where appraisers are engaged less often than in more populated communities. The commenters noted that, if the AMCs reduce panels to actively engaged appraisers, then real estate transactions in small communities and rural areas will take more time because AMCs would not typically have pre-approved appraisers readily available for this type of assignment.[63] For these reasons, the commenters requested that the Agencies modify the proposed method of counting appraisers in an AMC's network or panel to include only appraisers who are actually engaged to perform an appraisal during a 12-month period.

The Agencies understand the commenters' concerns relating to the panel membership and the potential for AMCs to reduce their appraiser networks or panels to reduce ASC fees. The Agencies are also cognizant of, and concerned about, the potential adverse effects this may have on small communities and rural areas. However, for several reasons, the Agencies decline to amend the rule such that only appraisers actually given assignments in a particular year will be counted as being on the panel. First, the Agencies interpret sections 1124 and 1121(11) to mean that the counting of appraisers in determining whether an entity is subject to the AMC minimum requirements does not control or affect the counting of appraisers for purposes of payment of the AMC National Registry fee.[64] Therefore, this final rule does not address or require the collection or calculation of these fees. Section 34.212 of the rule implements FIRREA section 1121(11) and governs how to count the number of appraisers on a panel *only* for purposes of whether an entity is an AMC subject to the AMC minimum requirements of this final rule, either as an AMC registered with a State that adopts these requirements or as a Federally regulated AMC.[65] The rule requires AMCs to provide information to the State or States in which they operate, to be used in determining the payment of the annual AMC National Registry fee, but does not address or control how to calculate the number of appraisers on a network or panel for purposes of determining the fee. The AMC National Registry fee provisions pertaining to the calculation, assessment, and collection of the fee are addressed in FIRREA section 1109(a), which is enforced and administered by the ASC, not by the Agencies pursuant to section 1124.[66] As such, it is the ASC, and not the Agencies in this rulemaking, that will determine how to calculate and pay the AMC National Registry fee.

Second, the statute that the Agencies are charged with implementing expressly defines an AMC with reference to the number of appraisers that the AMC ''oversees'' on a ''network or panel'' in a given year, not only on the number of appraisers to which it actually gives assignments.[67] While commenters speculate that this approach to defining the number of appraisers that an AMC oversees on a network or panel may lead to efforts to evade the definition, the alternative approach suggested by commenters of relying only on the number of appraisers actually used during a 12-month period will also encourage evasion attempts. This alternative would allow AMCs to accumulate relationships with large numbers of independent contractors, advertise this breadth of coverage, and evade the rule by managing the actual use of appraisers through the year.

The Agencies will monitor the effect of the rule and the definition of AMC for evasion and revisit the rule to the extent appropriate and permitted by statute in light of future developments.

2. Section 34.212(d): Annual Period for Counting Appraisers on AMC Panel

Proposed § 34.212(d) provided two options to States for calculating the number of appraisers on an entity's panel for determining whether the entity meets the minimum thresholds for designation as an AMC. The first was the 12-month calendar year and the second was any other 12-month period set by a State. One commenter suggested that, to promote uniformity, all States should be required to use the calendar year for determining whether an entity has the requisite number of appraisers on its panel to qualify as an AMC.

Under the proposed rule, States would have the flexibility to align the 12-month period for determining AMC status with their AMC registration calendars, which may, or may not, be based on the calendar year. In this regard, the Agencies are aware that many States already do not use a calendar year for their existing appraiser registration process. The Agencies believe that allowing states to set the 12-month period provides appropriate flexibility and will help States comply with the minimum requirements and reduce regulatory burden for State governments. Thus, the Agencies adopt § 34.212(d) in the final rule without change.

C. Section 34.213: Appraisal Management Company Registration

1. Section 34.213(a): Minimum Requirements for Participating States

Under proposed § 34.213(a), adopted without change in this final rule, participating States must have a licensing program in place within the State appraiser certifying and licensing agency that has the authority to: (1) Review and approve or deny an AMC's application for initial registration; (2) review and renew or refuse to renew an AMC's registration periodically; (3) examine the books and records of an

[63] One commenter, a coalition of three AMCs, stated the process of approving an appraiser for a panel typically requires from one week at a minimum to a month.

[64] 12 U.S.C. 3350(11) (defining an AMC subject to the minimum requirements as, in pertinent part, an entity with a ''network or panel of more than 15 certified or licensed appraisers in a State or 25 or more nationally (meaning two or more States) within a given year.'' 12 U.S.C. 3350(11). The provision of the statute relevant to determining the registry fee is in section 1109(a)(4)(B), which provides that the fee is based on the number of appraisers ''working for or contracting with [an AMC] in [a] state during the previous year.'' FIRREA section 1109(a)(4)(B), 12 U.S.C. 3338(a)(4)(B).

[65] 12 U.S.C. 3350(11).

[66] 12 U.S.C. 3338(a), 3353.

[67] FIRREA section 1121(11), 12 U.S.C. 3350(11) (defining AMC).

AMC operating in the State and require the AMC to submit reports, information, and documents to the State; (4) verify that the appraisers on the AMC's appraiser panel hold valid State certifications or licenses, as applicable; (5) conduct investigations of AMCs to assess potential violations of applicable appraisal-related laws, regulations, or orders; (6) discipline, suspend, terminate, and refuse to renew the registration of an AMC that violates applicable appraisal-related laws, regulations, or orders; and (7) report to the ASC an AMC's violation of applicable appraisal-related laws, regulations, or orders, as well as disciplinary and enforcement actions and other relevant information about an AMC's operations.

These authorities and mechanisms reflected the Agencies' interpretation of the provisions of section 1124(a), including the minimum requirement in section 1124(a)(1) that AMCs be ''subject to supervision'' by the State appraiser certifying and licensing agency.[68] The Agencies interpret section 1124(a) as being consistent with the criteria outlined in FIRREA sections 1103, 1109, and 1118(a), which describe the elements of State regulation of AMCs that will be monitored by the ASC.[69] For example, the ASC is responsible for monitoring whether States have supervision systems in place that would allow a State to process complaints against an AMC and conduct investigations in connection with those complaints.[70] The ASC is also responsible for monitoring whether a State takes appropriate enforcement actions against an AMC that is found to have violated applicable laws and regulations.[71] Consistent with the interpretation stated in the proposal, the Agencies continue to believe that these requirements are consistent with the enforcement and supervision authorities underlying an effective regulatory program and will ensure that State appraiser certifying and licensing agencies have the required structures for the registration and supervision of AMCs.

2. Section 34.213(b): Minimum Requirements for State-Registered AMCs

The Agencies are adopting proposed § 34.213(b) without change. Section 34.213(b) implements FIRREA sections 1121(11) and 1124 and provides that participating States must require State-registered AMCs to follow certain minimum requirements when AMCs provide appraisal management services for a creditor or ''underwriter of or other principal in the secondary mortgage markets'' that are related to a covered transaction.[72] Pursuant to the minimum requirements in § 34.213(b), an AMC (other than a Federally regulated AMC) is required to register with, and be subject to supervision by, a State appraiser certifying and licensing agency in each State in which the AMC operates. In addition, States must require AMCs to verify that only State-certified or State-licensed appraisers are used when a creditor or secondary mortgage market participant engages in a transaction that requires the services of a State-certified or State-licensed appraiser under the Federally related transaction regulations. A State also must require registered AMCs to have processes and controls reasonably designed to ensure that the AMC, in engaging an appraiser, selects an appraiser who has the requisite education, expertise, and experience to complete competently the assignment for the particular market and property type. This minimum requirement implements the requirement of section 1124(a)(2)[73] and emphasizes a core principle of the Agencies' FIRREA appraisal regulation and the Interagency Appraisal and Evaluation Guidelines, which is that an appraiser must not only be State credentialed and competent generally, but also have specific competency to perform a particular appraisal assignment.[74]

In addition, States must require an AMC to establish and comply with processes and controls reasonably designed to ensure that the AMC conducts its appraisal management services in accordance with: (1) The AMC's obligations as a covered person with respect to mandatory reporting, conflicts of interest, and other acts or practices that would violate valuation independence pursuant to section 129E(a) through (i) of TILA; and (2) the AMC's obligations as a creditor's agent with respect to appraiser compensation pursuant to section 129E(i) of TILA, 15 U.S.C. 1639e(i).[75]

As noted in the proposed rule, the AMC minimum standards do not affect the responsibility of banks, Federal savings associations, State savings associations, bank holding companies, and credit unions for compliance with applicable regulations and guidance concerning appraisals. Under the interagency appraisal rules, for example, if an appraisal is prepared by a fee appraiser (as opposed to in-house, by the institution), the appraiser must be engaged directly by the regulated institution or its agent, and have no direct or indirect interest, financial or otherwise, in the property or the transaction.[76] As stated in the Interagency Appraisal and Evaluation Guidelines, an institution that engages a third party, such as an AMC, to administer any part of the institution's appraisal program remains responsible for compliance with applicable laws concerning appraisers and appraisals.[77]

The Agencies requested comment on the proposed minimum requirements for State registration and supervision of AMCs. (*See* Question 6 in the proposal.) The Agencies also asked related questions concerning appraisal review standards and potential challenges States may encounter under the proposed minimum requirements for State registration and supervision of AMCs. (*See* Questions 7 through 11 in the proposal.) The following is a summary of these comments, followed by the response from the Agencies.[78]

[68] 12 U.S.C. 3353(a). As stated in the proposal, the Agencies view section 1124 as allowing the Agencies to establish more specific requirements for supervision and registration of AMCs that implement the general requirements enumerated in section 1124(a). *Id.* In addition, by providing that the regulation shall ''include'' the requirements enumerated in section 1124, the statute implies that the Agencies have the discretion to establish additional supervisory standards for State oversight of AMCs consistent with the general requirements specifically enumerated in section 1124(a). *Id.*

[69] *See* 12 U.S.C. 3332(a)(1)(B) (requiring the ASC to monitor requirements established by the States for supervision of AMCs); 12 U.S.C. 3338(a) (requiring each participating State to transmit reports to the ASC on supervisory activities involving AMCs and disciplinary actions taken); and 12 U.S.C. 3347(a) (requiring the ASC to monitor States to assess whether a State has an effective regulatory program).

[70] *See* FIRREA section 1103(a)(1)(B), 12 U.S.C. 3332(a)(1)(B).

[71] *See* FIRREA sections 1109(a)(3) and 1118(a)(4), 12 U.S.C. 3338(a)(3) and 3347(a)(4).

[72] 12 U.S.C. 3350(11), 3353.

[73] 12 U.S.C. 3353(a)(2).

[74] *See* 12 CFR 34.46(b) (OCC); *see also* Interagency Appraisal and Evaluation Guidelines, 75 FR 77450, 77458 (December 10, 2010); Appraisal Standards Board, Uniform Standards of Professional Appraisal Practice, Appraiser Competency Rule (2014–2015), *available at* The Appraisal Foundation, *https://netforum.avectra.com/eWeb/DynamicPage.aspx?Site=TAF&WebCode=USPAP* (requiring that an appraiser have specific competency for the appraisal assignment).

[75] *See* 12 CFR 226.42 (Board); 12 CFR 1026.42 (Bureau).

[76] 12 CFR 34.45 and 164.5 (OCC); 12 CFR 225.65 (Board); 12 CFR 323.5 (FDIC); 12 CFR 722.5(NCUA).

[77] *See* Interagency Appraisal and Evaluation Guidelines, 75 FR 77450, 77463 (discussing third-party arrangements).

[78] The Agencies received many comments on Question 6 concerning the proposed minimum requirements for State registration and supervision of AMCs. Commenters were generally supportive of the proposed requirements. However, the commenters made several observations and expressed concerns with the proposed requirements.

Continued

For the reasons explained below, the Agencies adopt proposed § 34.213 on AMC registration without change in the final rule.

a. Appraisal Review

The Agencies requested comment on the proposal to defer consideration of appraisal review standards to a separate rulemaking. (*See* Question 7 in the proposal). Some commenters agreed with the Agencies that appraisal review standards should be addressed in a separate rulemaking. Other commenters suggested that there are many pressing questions concerning appraisal review standards and that this rulemaking should therefore incorporate such standards.

In drafting the minimum requirements for State registration and supervision of AMCs, and the definition of appraisal management services discussed previously, the Agencies considered whether to require AMCs to follow minimum standards when performing appraisal reviews. This question was presented by section 1121(11), which includes appraisal review as one of the types of appraisal management services performed by AMCs.[79] In considering this question, the Agencies noted that FIRREA section 1110 requires a separate rulemaking regarding the requirement that, for Federally related transactions, appraisals shall be subject to ''appropriate'' review for compliance with USPAP.[80] As stated in the proposal, the Agencies believe that a rulemaking to implement section 1110 provides the appropriate opportunity to address the requirement for appraisal reviews.[81] For this reason, the proposed minimum standards for AMCs did not include appraisal review standards.

Commenters identified issues that may be appropriate for consideration in a rulemaking pursuant to FIRREA section 1110(3), but did not address why those standards are more appropriately addressed in the context of this rulemaking rather than in a separate rulemaking to implement section 1110(3).[82] The Agencies continue to believe that addressing appraisal review issues more comprehensively in a separate rulemaking is appropriate, rather than doing so in a limited way as part of the AMC rule. The appraisal review standard of section 1110(3) applies to all regulated financial institutions subject to the appraisal rules of the Federal financial institution regulatory agencies, not just appraisals for which one of those firms uses an AMC to engage an appraiser. In addition, most commenters supported a separate rulemaking on appraisal review standards. For these reasons, consistent with the proposal, the final rule does not contain appraisal review standards.

b. Barriers to Implementation of AMC Minimum Requirements

The Agencies also asked about whether any barriers existed for States in implementing the proposed AMC minimum requirements. (*See* Question 8 in the proposal). In response, the Agencies received several comments indicating concern that States might not have adequate funding or resources to implement or enforce the proposed rule. Other commenters expressed the view that the requirement to establish authorities and mechanisms to examine the books and records of an AMC could be subject to different interpretations by each State, and that the Agencies' expectations should be clarified. A third set of commenters indicated additional guidance is needed on the expectations for States engaging in examinations of AMCs. One commenter believed that States should be given the option to register AMCs for longer than a period of one year. *See* proposed § 34.212 (requiring an annual count of appraisers on an entity's panel to determine whether the entity is subject to State registration requirements pursuant to the proposed rule). The commenter indicated that many States allow appraiser registration for longer periods and that doing so for AMCs might facilitate implementation of the rule by States.

The Agencies are aware of, and sensitive to, the adequacy of participating States' resources to supervise AMCs in the manner contemplated by FIRREA section 1124. It is the Agencies' understanding, however, that many States that have already established AMC laws and registration programs have collected fees from AMCs, in part to offset the costs of the registration and supervision programs, using authority under State law. Nothing in this rule would prevent these States, or States that choose to become participating States, from continuing to charge fees to AMCs in the future.[83] The Agencies also note that the registration and supervision of AMCs is voluntary, and that a State may elect not to establish such a program for any reason, including if its resources do not support such a program.

With respect to the request that the Agencies set standards for State supervision of AMCs, the Dodd-Frank Act section 1473 amended FIRREA to confirm clearly the States' ability to exercise registration and supervisory capacities over AMCs, which the State can exercise using its own discretion, based on the individual State's enforcement priorities.[84] As such, the Agencies leave supervisory standards to the discretion of the States and to the ASC, which is charged under Title XI of FIRREA with evaluating the efficacy of State registration and supervision of AMCs.

Regarding the request that States be able to register AMCs for longer than a year, the Agencies defer to individual States, but note that the requirement for an annual count of appraisers on an entity's panel is statutory. Specifically, the definition of AMC in FIRREA section 1121(11) bases whether an entity is an AMC on the number of appraisers on an entity's panel ''within a given year.'' [85] Regarding whether a two-year AMC National Registry fee collection program is permissible or feasible, the Agencies defer to the ASC, which administers the relevant portion of FIRREA.[86] Specifically, FIRREA section 1109(a)(4) requires States to submit AMC fees for the AMC National Registry to the ASC annually.[87]

While the registration fee cycle is dictated by section 1109(a)(4), any additional licensing fees or any other associated fees charged by the State can be charged based on the State's determination of an appropriate cycle.[88] The Agencies do not see a need to make any changes from the proposed version of the rule to clarify the annual registration cycle requirement in the final rule.

c. Trainee Appraisers

The Agencies received one comment on the requirement that States must verify that the appraisers on an AMC's panel hold valid States licenses and certifications (*see* proposed § 34.213(a)(4)). This commenter expressed concern that the requirement

These comments overlap with comments made concerning other questions in the proposal. As such, Question 6 is not addressed separately.

[79] 12 U.S.C. 3350(11).

[80] FIRREA section 1110(3), 12 U.S.C. 3339(3).

[81] 12 U.S.C. 3339(3).

[82] 12 U.S.C. 3339(3).

[83] This approach is consistent with the States' approach to registering appraisers. The Agencies understand that State appraiser certifying and licensing agencies have collected fees from appraisers for administering national appraiser registration for many years.

[84] 12 U.S.C. 3346.

[85] 12 U.S.C. 3350(11).

[86] FIRREA section 1109(a)(4), 12 U.S.C. 3338(a)(4) (requiring States to submit AMC fees for the National Registry to the ASC annually).

[87] 12 U.S.C. 3338(a)(4).

[88] 12 U.S.C. 3338(a)(4).

could be interpreted by some States to prohibit appraisers from using trainees to assist with assignments.

The Agencies are adopting proposed § 34.213(a)(4) with a minor non-substantive change. New § 34.213(a)(4) requires States to verify that the appraisers on an AMC's appraiser panel—as defined in § 34.211(e)—hold valid State certifications or licenses, as applicable. The Agencies are removing references to a ''list,'' ''network,'' or ''roster'' because these terms are incorporated into the definition of ''appraiser panel'' in § 34.211(e). Regarding the concerns about whether trainee appraisers may be used in light of this requirement, § 34.213(a)(4) is not intended to imply any changes in the current requirements for their use. The requirement in § 34.213(a)(4) complements the requirement in proposed § 34.213(b)(2) (adopted as final without change) that AMCs must use only State-licensed or State-certified appraisers for Federally related transactions. Both are intended to implement FIRREA section 1124(a)(2), under which the Agencies must require States to require AMCs to use only State-licensed or certified appraisers for Federally related transactions.[89]

The trainee appraiser designation established by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation requires trainees to work under the supervision of a qualified supervisory appraiser, as authorized by section 1122(e).[90] The Agencies continue to support the use of trainee appraisers as long as they work under the supervision of a State-certified and or State-licensed appraiser and have met the qualifications established by the appropriate State and the AQB. As such, the requirement in section 1124(a)(2) and the proposed and final rules should not be interpreted to bar trainee appraisers from working with State-certified or State-licensed appraisers who perform appraisals for AMCs, which is authorized by section 1122(e).[91] The final rule amends proposed § 34.213(b)(2), by substituting the term ''engage'' for the term ''use'' to clarify that an appraiser may work with a trainee appraiser on an appraisal, but only the appraiser may be ''engaged'' by the AMC to perform appraisals. In a Federally related transaction, an AMC may engage only a State-certified or State-licensed appraiser.

d. Valuation Independence

The Agencies received comments on proposed § 34.213(b)(5), which requires participating States to require AMCs to establish and comply with processes and controls reasonably designed to ensure that the AMC conducts its appraisal management services in accordance with the requirements of the valuation independence requirements of TILA section 129E.[92] These commenters requested that the final rule clarify the extent to which States are expected to investigate and enforce TILA section 129E and its implementing regulations, which includes the requirements to pay appraisers customary and reasonable fees. These commenters also expressed concern that States might interpret these rules differently, potentially in ways that may conflict with Federal interpretations.

In response to the comments, the Agencies note that, pursuant to section 1124(a)(4), States must require AMCs to require that appraisals are conducted in accordance with the valuation independence requirements of section 129E(a) through (i) of TILA.[93] The Agencies proposed to implement this requirement by mandating that participating States require AMCs to:

- Establish and comply with processes and controls reasonably designed to ensure that the AMC, in engaging an appraiser, selects an appraiser who is independent of the transaction and who has the requisite education, expertise, and experience necessary to competently complete the appraisal assignment for the particular market and property type; and
- Establish and comply with processes and controls reasonably designed to ensure that the AMC conducts its appraisal management services in accordance with the requirements of section 129E(a)–(i) of the Truth in Lending Act, 15 U.S.C. 1639e(a)–(i), and regulations thereunder.

See proposed § 34.213(b)(3) and (4).

Questions about what mechanisms a State agency may use to assess a party's compliance in connection with any authority the State has to commence a civil action to enforce section 129E of TILA are outside the scope of this rulemaking.[94] This final rule sets minimum standards for States to adopt in establishing a State program for registering and supervising AMCs. Once adopted by a State, these minimum standards become part of the State's legal framework for licensing and registering AMCs. Questions concerning what authority a State may confer on its own agency to supervise for and enforce compliance with the State's licensing and registration program are also outside the scope of this rulemaking.

3. Other Issues

a. The 36-Month Implementation Period

The Agencies asked for comment on whether aspects of the proposed rule would be challenging for States to implement within 36 months. (*See* Question 9 in the proposal.) The Agencies also asked States to identify alternative approaches that would make implementation easier. Seven commenters stated that 36 months does not give States enough time for implementation and that the 36-month implementation period should begin after the ASC establishes the AMC National Registry and has issued its clarifying regulations. One commenter asserted that States would have difficulty beginning the implementation process until the ASC issued its regulations. Other commenters expressed concerns that the ASC would be unable to set up a functioning AMC National Registry and issue its clarifying regulations within 36 months after this final rule is issued.

The Agencies note that Congress specifically provided for a 36- to 48-month implementation period before restrictions are imposed on AMCs in States that have not yet participated. This 36-month implementation period is set pursuant to section 1124(f), which also provides for a potential 12-month extension if the ASC finds that a State has made substantial progress towards implementing an AMC registration and supervision program.[95] Thus, only the ASC, and not the Agencies, may extend the implementation period beyond 36 months. The Agencies anticipate that concerns about the 36-month period and the need for registry regulations will be addressed by the ASC. In response to the concern expressed by the commenters, however, the Agencies are adopting changes to the proposed definitions that relied on cross-references to Regulation Z, 12 CFR part 1026 rule, by substituting the text of these definitions for the cross references. As noted in the section-by-section analysis of § 34.211, above, the Agencies believe that these changes mitigate the potential obligations of States to update, clarify, or amend State law or its interpretations as Regulation Z is amended over time, or if the

[89] 12 U.S.C. 3353(a)(2).
[90] 12 U.S.C. 3351(e).
[91] 12 U.S.C. 3351(e), 3353(a)(2).
[92] 15 U.S.C. 1639e.
[93] 12 U.S.C. 3353(a)(4), 15 U.S.C. 1639e.
[94] 15 U.S.C. 1639e.
[95] FIRREA sections 1124(f)(1) and (2), 12 U.S.C. 3353(f)(1) and (2).

numbering of definitions in Regulation Z changes.

b. Potential Differences Between State Laws and the Proposed AMC Rule

The Agencies asked for comment on whether there are questions raised by any differences between State laws and the proposed rule and whether those differences should be addressed in the final rule. (*See* Question 11 in the proposal.) As noted, one commenter suggested that, to promote uniformity, all States should be required to use the calendar year for determining whether an entity has the requisite number of appraisers on its panel to qualify as an AMC. These comments were addressed in the section-by-section analysis of § 34.212(d), above.

c. Voluntary Nature of State Adoption of AMC Registration and Supervision Programs

As described earlier in this preamble, the Agencies have interpreted section 1124 to mean that there is no requirement for States to adopt programs for registration and supervision of AMCs.[96] Rather, if a State chooses not to adopt such a program, AMCs located in that State may not provide appraisal management services for Federally related transactions, unless the AMCs are Federally regulated. To qualify to provide appraisal management services for Federally related transactions, a State program must include the minimum requirements for registration and supervision of AMCs in section 1124 and in the final rule.[97]

The Agencies received a number of comments concerning the Agencies' interpretation of the statute and the conclusion that adoption by States of AMC registration and supervision programs is voluntary and optional. These commenters argued that, in non-participating States, non-Federally regulated AMCs will be at a competitive disadvantage, because these AMCs will be barred by statute from providing appraisal management services for Federally related transactions. In addition, the commenters argued that interpreting State adoption of the minimum requirements to be voluntary would burden lenders. These commenters asserted that, in non-participating States, lenders would have to set up in-house appraisal management staff, which would raise the costs of lending. In addition, the commenters argued that, in non-participating States, consumers would be affected adversely by increased costs for appraisals and delays arising from the absence of AMCs in the marketplace. These commenters also suggested that either the Agencies or the ASC should serve as a ''back-up'' regulator to register and supervise AMCs in non-participating States. These commenters suggested that this alternative would address the same policy concerns they expressed in arguing for mandatory State participation.

In response to these comments, the Agencies note first that section 1124(a), by its plain terms, does not require any State to adopt an AMC registration and supervision program.[98] Nor is there a stated penalty for a State that declines to do so. Rather, under section 1124(f), an AMC (that is not Federally regulated) in a non-participating State is barred from providing appraisal management services for Federally related transactions.[99] The Agencies note that 38 States have already adopted AMC programs.[100] The commenters also provided no substantiating basis to support the commenters' warning that lending will be inhibited or more costly in non-participating States. If after the 36-month period following issuance of the final rule (or any extended period permitted by the ASC), a State has not yet adopted an AMC registration and supervision program, many options exist for creditors to obtain appraisals for Federally related transactions. Creditors that do not wish to hire in-house appraisers can engage third-party appraisers directly.[101] Smaller AMCs (those that have fewer than 15 appraisers in the State on their panel or fewer than 25 appraisers in two or more States) as well as Federally regulated AMCs can still perform services in Federally related transactions. AMCs that exceed the statutory size threshold may also continue to service transactions that are not Federally related and, if the State does later participate, can also then provide services in Federally related transactions.

Some commenters suggested that the Agencies or the ASC step in to register and supervise AMCs in non-participating States. Neither section 1124 nor FIRREA authorizes either the Agencies or the ASC to serve as a ''back up'' regulator for registration and supervision of AMCs.[102] The Agencies are only permitted to directly supervise Federally regulated AMCs, as discussed in the section-by-section analysis of § 34.215, below.

D. Section 34.214: Registration Limitations

Section 34.214 finalizes proposed § 34.215, which placed certain limitations on whether an AMC (whether or not Federally regulated) may be registered in a State or included in the AMC National Registry. Proposed § 34.215 was based on section 1124(d), which provides that an AMC shall not be registered by a State or included on the AMC National Registry if the company, in whole or in part, directly or indirectly, is owned by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State.[103] Section 1124(d) provides further that each person who owns more than 10 percent of an AMC must be of good moral character, as determined by the State appraiser certifying and licensing agency, and must submit to a background investigation carried out by the State appraiser certifying and licensing agency.[104]

To implement this provision, proposed § 34.215(a)—finalized in substantially similar form at § 34.214(a)—provided that an AMC may not be registered by a State or included on the AMC National Registry if such company, in whole or in part, directly or indirectly, is owned by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State. As the Agencies noted in the proposal, section 1124(d) states clearly that the limitations regarding appraiser licensure and certification determine both whether an AMC may be ''registered by a State'' and

[96] 12 U.S.C. 3353.

[97] 12 U.S.C. 3353.

[98] 12 U.S.C. 3353(a).

[99] 12 U.S.C. 3353(f).

[100] One commenter, an AMC, highlighted a report by a Hawaii State auditor regarding a proposed bill in the Hawaii legislature that concerns the registration of AMCs. The commenter argued that this report provided evidence that Hawaii would not adopt an AMC law. The auditor's report, however, does not indicate that it would be inappropriate for a State to participate in the AMC regulatory system established under section 1124. Rather, the report opined that the particular proposed bill would not be the appropriate method of participation for various reasons, including that the regulation of AMCs should not be managed by the State real estate commission. *See* Auditor of the State of Hawaii Report 10–07 (Sept. 2010) at 4, Sunrise Analysis: Real Estate Appraisal Management Companies, (Sept. 2010) at 4, *available at http://files.hawaii.gov/auditor/Reports/2010/10-07.pdf.*

[101] The valuation independence provisions of TILA section 129E and its implementing regulations do not require use of AMCs. 15 U.S.C. 1639e, implemented at 12 CFR 226.42 (Board) and 12 CFR 1026.42 (Bureau).

[102] 12 U.S.C. 3353.

[103] 12 U.S.C. 3353(d).

[104] 12 U.S.C. 3353(d).

whether an AMC may be ''included on the national registry'' of AMCs.[105]

In addition, proposed § 34.215(b)—finalized at § 34.214(b)—provided that, for AMCs seeking to be registered in a State, each person who owns more than 10 percent of an AMC must be of good moral character, as determined by the State appraiser certifying and licensing agency, and must submit to a background investigation carried out by the State appraiser certifying and licensing agency. Under the proposal, this limitation would apply to Federally regulated AMCs only if they seek to register voluntarily with a State. Under the proposal, these threshold requirements concerning licensure would be ongoing obligations for State appraiser certifying and licensing agencies. As such, a State would be expected to review whether an AMC meets the proposed ownership limitations, as described in the statute and in proposed § 34.215 (finalized at § 34.214), at the time of registration of an AMC, and at the time of renewal of the AMC license each year, or more frequently as determined necessary by that State.

1. Section 34.214 (a): Technical Versus Substantive Licensing Violations

Some commenters suggested that the Agencies consider circumstances in which an appraiser's license lapsed or was revoked for technical reasons unrelated to the quality of appraisals performed by the appraiser. They asserted that being barred from owning an AMC eligible for registration in a State or included in the AMC National Registry in these cases is potentially unfair. One example of this is when an appraiser neglects to renew his or her appraiser's license on time. Depending on the State law, an appraiser would typically be able to be reinstated, pending payment of certain penalties. In this situation, the lapse in the appraiser's license is unrelated to fraud or a failure to perform an appraisal in compliance with USPAP.

The Agencies agree that non-substantive grounds for the revocation of an appraiser's license should not be construed to be within the scope of the registration limitations in section 1124(d).[106] In connection with this, the Agencies agree that an appraiser who is subsequently reinstated by the State appraiser certifying and licensing agency should not be within the scope of the registration limitations. For example, if an appraiser's license lapses for non-payment of fees, and the appraiser is later reinstated by the State appraiser certifying and licensing agency after meeting his or her obligation, the appraiser should not be barred from owning an AMC. If, however, an appraiser's license or certificate is revoked, for example, for violations of the TILA independence standards or for failure to comply with USPAP, an AMC owned wholly or in part by that appraiser should not be eligible to register in a State or appear on the AMC National Registry. For these reasons, the final rule clarifies that an appraiser is subject to the ownership ban if the revocation of the appraiser's license or certification was for a substantive cause, as determined by the State certifying and licensing agency.

2. Other Issues

Some commenters expressed concern that States may not be able to obtain the information to determine whether an appraiser license has been revoked in another State. One commenter requested guidance on how to approach the moral character registration requirement within a corporate structure. Specifically, the commenter inquired about whether a State must review issues related to moral character to owners beyond the AMC, for example to a holding company. Another commenter suggested that the Agencies define ''good moral character'' rather than leaving it to participating States to adopt their own definition.

With respect to the commenters' questions concerning the details and logistics of a State's investigation of an applicant for presence of the registration limitation factors, the Agencies believe that it is desirable to afford flexibility to the States, many of which currently perform background investigations in connection with various licensing regimes, to establish appropriate procedures and the scope of the background investigations to be performed by that particular State. The statute establishes the ASC as the agency that oversees the adequacy of State AMC registration and investigation procedures. Similarly, with respect to the comment suggesting the final rule define ''good moral character'' in a manner that all participating States would be required to adopt, the Agencies note that section 1124 provides for the good moral character limitation to be applied ''as determined by the State.'' Thus, consistent with the statute, the final rule defers to the participating States to make determinations as to the scope of the good moral character requirement.[107] In overseeing implementation by participating States, the ASC potentially could provide input as well.

Finally, the Agencies are also clarifying in § 34.214(a) that the section regarding registration limitations applies to AMCs required to register with a State, not to Federally regulated AMCs (unless they voluntarily wish to register with a State). Accordingly, the title of this section has been revised from ''Registration limitations'' to ''Ownership limitations for AMCs registering in a State.'' As discussed in the section-by-section analysis of new § 34.215(b), below, for clarity the Agencies added a separate provision regarding limitations on Federally regulated AMCs being included on the AMC National Registry, also pursuant to section 1124(d).[108]

E. Section 34.215: Requirements for Federally Regulated AMCs

Section 1124(c) provides that AMCs that are owned and controlled subsidiaries of an insured depository institution or an insured credit union and regulated by a Federal financial institutions regulatory agency, are not required to register with a State.[109] These Federally regulated AMCs are, however, subject to the same minimum requirements as AMCs that are not regulated by a Federal financial institutions regulatory agency.

1. Section 34.215(a): Requirements in Providing Services

Section 34.215(a) finalizes without change the proposed § 34.214(a) concerning requirements for Federally regulated AMCs. Pursuant to proposed § 34.214(a), Federally regulated AMCs were subject to the same substantive standards that were proposed for non-Federally regulated AMCs. Specifically, pursuant to § 34.214(a), Federally regulated AMCs were required to have systems in place to ensure that only State-certified or State-licensed appraisers perform appraisals for Federally related transactions; that appraisers with the requisite education, expertise, and experience necessary for the assignment are used; that appraisals comply with USPAP; and that the

[105] 12 U.S.C. 3353(d).

[106] 12 U.S.C. 3353(d).

[107] State appraiser boards also have experience applying the ''good moral character'' standard, which is a common element of appraiser licensure standards already. *See, e.g.,* Virginia 18 VAC 130–20–30(1); Pennsylvania Code Ch. 36.12(a); Michigan Code Ch. 339.2610; Missouri Code Ch. 339.511(2); N.J. S.A. Title 45 Ch. 14F–10(b).

[108] 12 U.S.C. 3353(d).

[109] 12 U.S.C. 3353(c). However, nothing in the proposed rule would prohibit a Federally regulated AMC from registering with a State if the State permitted it to do so.

AGENDA ITEM 6

valuation independence requirements of TILA section 129E are met.[110]

2. Section 34.215(b): Ownership Limitations for Federally Regulated AMCs

Section 34.215(b) reflects a non-substantive revision to the proposal. This provision implements limitations on inclusion in the AMC National Registry for Federally regulated AMCs pursuant to section 1124(d) and reorganizes them into a separate section for Federally regulated AMCs.[111] The proposed rule folded the limitations on Federally regulated AMCs into proposed § 34.215 (Registration limitations), which also addressed limitations on AMCs that are required to register with a State.

For clarity, the final rule separates the ownership limitations on AMCs required to register with States (proposed § 32.215; finalized in § 34.214) from the ownership limitations on Federally regulated AMCs that can be included on the AMC National Registry (§ 34.215(b)). Specifically, § 34.215(b) states that a Federally regulated AMC shall not be included on the AMC National Registry if such AMC, in whole or in part, directly or indirectly, is owned by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State for a substantive cause, as determined by the State. Section 34.215(b) also provides that an AMC is not barred by § 34.215(b) from being included on the AMC National Registry if the license or certificate of the appraiser with an ownership interest in the AMC has been reinstated by the State or States in which the appraiser was licensed or certified.

3. Section 34.215(c): Reporting Information for the AMC National Registry

As part of being included on the AMC National Registry, the proposed rule required Federally regulated AMCs to provide to each participating State in which the AMC operates the information required by the ASC for administration of the AMC National Registry. Specifically, under proposed § 34.214(b), Federally regulated AMCs would have been required to provide information relating to the determination of the AMC National Registry fee and the information needed to determine whether the ownership limitations under proposed § 34.215 (finalized as § 34.215(b), discussed above) apply. Finally, the proposed rule directed Federally regulated AMCs to contact the ASC concerning alternative means for submitting the information outlined in § 34.214(b), in the event a State did not convey the information.

The Agencies received comments concerning the requirement that States convey information on Federally regulated AMCs to the ASC, which many commenters addressed when responding to a specific question in the proposal concerning potential barriers to a State providing the necessary information to the ASC, as discussed below.

The Agencies asked for comment on whether there may be barriers to collecting information on Federally regulated AMCs for the ASC. (*See* Question 10 in the proposal.) A number of commenters expressed the view that the supervision and handling of Federally regulated AMCs should be done by the ASC, not by the States. Other commenters expressed concern that States do not have a way to identify a Federally regulated AMC. Another set of commenters suggested that States would have difficulty with collecting information concerning Federally regulated AMCs because they do not have a process for the collection of such information. A few other commenters argued that States do not have authority over Federally regulated AMCs, which would make it impossible to police the collection requirement. Some commenters suggested that requiring States to collect information on Federally regulated AMCs amounted to an unfunded mandate, particularly if State law prohibited an agency from collecting a fee from an entity it does not license or regulate. These commenters argued that States should be compensated for collecting information from Federally regulated AMCs.

The Agencies note that the proposed and final rules do not implement the statutory requirement for States to collect the AMC National Registry fee, nor do they determine the process for collection. The collection of the fee is provided for pursuant to FIRREA section 1109 and will be implemented by the ASC, not the Agencies as part of this joint rulemaking.[112] In addition, the Agencies note that the requirement for States to collect fees from Federally regulated AMCs is statutory.[113] Under FIRREA section 1109(a)(4)(B), participating States are required to collect an annual ASC fee from each AMC that is registered with the States or operated as a subsidiary of a Federally regulated financial institution.[114]

In FIRREA section 1124(e), the Agencies are charged with jointly promulgating regulations for the reporting of the activities of AMCs to the ASC in determining the payment of the AMC National Registry fee.[115] The Agencies interpret FIRREA sections 1109(a)(4)(B) and 1124(e) together to require States to collect information related to the determination of the fee for Federally regulated AMCs operating in their States.[116] Therefore, in § 34.215(c), the Agencies are adopting the proposal to require Federally regulated AMCs to submit information required for the AMC National Registry to the States in which they operate without substantive change.

Specifically, new § 34.215(c) requires Federally regulated AMCs to report to the State or States in which they operate the information required to be submitted by the State to the ASC, pursuant to policies that will be developed and issued by the ASC regarding the determination of the AMC National Registry fee, including but not necessarily limited to information related to the ownership limitations in § 34.215(b). These ownership limitations relate to determining the AMC National Registry fee because the limitations determine whether an AMC is eligible to be included in the Registry in the first instance.

The Agencies understand commenters' concerns about States collecting information from Federally regulated AMCs and submitting it to the ASC. As discussed, the Agencies interpret the statute to require that participating States have a mechanism for collecting information from identified Federally regulated AMCs operating in their States and submitting it to the ASC. However, the Agencies emphasize that this final rule does not require States to identify Federally regulated AMCs operating in their States, nor are they responsible for supervising or enforcing a Federally regulated AMC's compliance with information submission requirements related to the AMC National Registry. Rather, the Federal agencies overseeing Federally regulated AMCs are responsible for supervising and enforcing the compliance of Federally regulated AMCs with these requirements, including whether the

[110] *See* section 129E of TILA, 15 U.S.C. 1639e (implemented at 12 CFR 1026.42).

[111] 12 U.S.C. 3353(d).

[112] 12 U.S.C. 3338.

[113] *See* section 1109(a)(4)(B), 12 U.S.C. 3338(a)(4)(B).

[114] 12 U.S.C. 3338(a)(4)(B).

[115] *See* FIRREA section 1124(e), 12 U.S.C. 3353(e).

[116] *See* 12 U.S.C. 3338(a)(4)(B), 3353(e).

AMC identifies itself to the State and submits required information. States are also not required to assess whether any licensing issues in that State of owners of a Federally regulated AMC disqualify the AMC from being on the AMC National Registry, pursuant to the ownership limitations in § 34.215(b). The final rule defers to the ASC to determine whether the cause of an appraiser license issue arose was ''substantive.'' The Agencies are sensitive to concerns raised about the cost to States of collecting and remitting information regarding Federally regulated AMCs. The final rule does not bar a State from collecting a fee from Federally regulated AMCs to offset the cost of collecting the AMC National Registry fee and the information related to the fee. In addition, pursuant to section 1109(b)(5), the ASC has the authority to provide grants to State appraiser certifying and licensing agencies to support the efforts of such agencies to comply with Title XI of FIRREA, including in connection with implementation of the AMC National Registry.[117] Finally, the Agencies consulted further with the ASC regarding the proposal to give Federally regulated AMCs the alternative to report information directly to the ASC, for example, when operating in a non-participating State that is not collecting information. Due to operational challenges raised by the ASC, the Agencies are removing this alternative from the final rule. However, the Agencies recognize that practical challenges may arise as the minimum requirements are adopted in States and reporting requirements take effect and will be monitoring these issues.

F. Section 34.216: Information To Be Presented to the ASC by Participating States

Section § 34.216 is adopted without change from proposed rule. Pursuant to § 34.216, States that establish AMC registration and supervision programs are required to submit to the ASC the information regarding AMCs required by ASC regulations and guidance. This provision implements the requirement in section 1124(e) for the Agencies to establish these reporting requirements.

The Agencies did not receive comments specifically relating to § 34.216; however, as discussed above in response to questions concerning potential barriers to State registration and supervision of AMCs, some commenters expressed concern regarding the costs of collecting information related to fees and the registration limitations, as well as the logistics of doing so with respect to Federally regulated AMCs.[118] As discussed above in the section-by-section analysis of § 34.213, the Agencies are aware that there are States that currently charge AMCs a fee to offset administrative costs and could continue to do so. The Agencies also believe that cost concerns may be addressed by the ASC, through its authority to provide grants to States to assist States in complying with Title XI of FIRREA. The Agencies expect that the ASC will work with both the States and the Agencies to address logistical issues as the final rule is implemented.

G. Integration of FDIC and OTS Rules on Appraisals

The FDIC proposed to integrate its appraisal regulations for both nonmember banks and State savings associations. Specifically, the FDIC proposed to rescind 12 CFR part 390, subpart X (part 390, subpart X), of the former OTS regulation entitled ''Appraisals.'' The FDIC did not receive any comments specifically relating to the integration of the former OTS rules on appraisals. The final rule implements this authority by rescinding the former OTS regulatory provisions on appraisals pertaining to State savings associations, as these entities are now covered by the FDIC's appraisal rules.

IV. Statutory Implementation Period

Pursuant to section 1124(f)(1), the limitation that applies to AMCs operating without registering with a participating State will apply as of 36 months from the effective date of this final rule.[119] As a result, States electing to participate have 36 months from August 10, 2015 to establish an AMC registration and supervision program that meets the minimum requirements in this final rule and register AMCs seeking to provide appraisal management services related to Federally related transactions in the State before this limitation begins to apply. Subject to the approval of the FFIEC, the ASC may extend this period by an additional 12 months if it makes a written finding that a State has made substantial progress towards implementing a registration and supervision program for AMCs that meets the standards in Title XI of FIRREA. The compliance date for the final rule for Federally regulated AMCs is 12 months after the effective date of this final rule with respect to practice requirements in § 34.215(a). This 12-month compliance date will allow Federally regulated AMCs time to develop the processes and controls required by this final rule. The compliance date for AMCs that are regulated by States will be determined by each State.

V. Regulatory Analysis

Paperwork Reduction Act

Certain provisions of the final rule contain ''information collection'' requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*). Under the PRA, the Agencies may not conduct or sponsor, and, notwithstanding any other provision of law, a person is not required to respond to, an information collection unless the information collection displays a valid Office of Management and Budget (OMB) control number. The information collection requirements contained in this final rule were submitted to OMB for review and approval at the proposed rule stage by the FDIC, FHFA, and OCC pursuant to section 3506 of the PRA and section 1320.11 of the OMB's implementing regulations (5 CFR part 1320). OMB instructed the agencies to examine public comment in response to the proposed rule and describe in the supporting statement of their next collections any public comments received regarding the collection as well as why (or why it did not) incorporate the commenter's recommendation. The Agencies received no public comments regarding the collection. The Board reviewed the proposed rule under the authority delegated to the Board by OMB.

The collection of information requirements in the final rule are found in §§ 34.212–34.216. This information is required to implement section 1473 of the Dodd-Frank Act.

Title of Information Collection: Minimum Requirements for Appraisal Management Companies.

OMB Control Nos.: The Agencies will be seeking new control numbers for these collections.

Frequency of Response: Event generated.

Affected Public: States; businesses or other for-profit and not-for-profit organizations.

Abstract:

State Recordkeeping Requirements

States seeking to register AMCs must have an AMC registration and supervision program. Section 34.213(a) requires each participating State to establish and maintain within its

[117] 12 U.S.C. 3338(b)(5).

[118] The commenters, however, did not offer data on what volume or burden the collection of information and transmission process would be expected to pose.

[119] 12 U.S.C. 3353(f).

appraiser certifying and licensing agency a registration and supervision program with the legal authority and mechanisms to: (i) Review and approve or deny an application for initial registration; (ii) periodically review and renew, or deny renewal of, an AMC's registration; (iii) examine an AMC's books and records and require the submission of reports, information, and documents; (iv) verify an AMC's panel members' certifications or licenses; (v) investigate and assess potential law, regulation, or order violations; (vi) discipline, suspend, terminate, or deny registration renewals of, AMCs that violate laws, regulations, or orders; and (vii) report violations of appraisal-related laws, regulations, or orders, and disciplinary and enforcement actions to the ASC.

Section 34.213(b) requires each participating State to impose requirements on AMCs not owned and controlled by an insured depository institution and regulated by a Federal financial institutions regulatory agency to: (i) Register with and be subject to supervision by a State appraiser certifying and licensing agency in each State in which the AMC operates; (ii) engage only State-certified or State-licensed appraisers for Federally regulated transactions in conformity with any Federally regulated transaction regulations; (iii) establish and comply with processes and controls reasonably designed to ensure that the AMC, in engaging an appraiser, selects an appraiser who is independent of the transaction and who has the requisite education, expertise, and experience necessary to competently complete the appraisal assignment for the particular market and property type; (iv) direct the appraiser to perform the assignment in accordance with USPAP; and (v) establish and comply with processes and controls reasonably designed to ensure that the AMC conducts its appraisal management services in accordance with section 129E(a)-(i) of TILA.

State Reporting Burden

Section 34.216 requires that each State electing to register AMCs for purposes of permitting AMCs to provide appraisal management services relating to covered transactions in the State must submit to the ASC the information required to be submitted under this Subpart and any additional information required by the ASC concerning AMCs.

AMC Reporting Requirements

Section 34.215(c) requires that a Federally regulated AMC must report to the State or States in which it operates the information required to be submitted by the State pursuant to the ASC's policies, including: (i) Information regarding the determination of the AMC National Registry fee; and (ii) the information listed in § 34.214.

Section 34.214 provides that an AMC may not be registered by a State or included on the AMC National Registry if such company is owned, directly or indirectly, by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State. Each person that owns more than 10 percent of an AMC shall submit to a background investigation carried out by the State appraiser certifying and licensing agency. While § 34.214 does not authorize States to conduct background investigations of Federally regulated AMCs, it would allow a State to do so if the Federally regulated AMC chooses to register voluntarily with the State.

AMC Recordkeeping Requirements

Section 34.212(b) provides that an appraiser in an AMC's network or panel is deemed to remain on the network or panel until: (i) the AMC sends a written notice to the appraiser removing the appraiser with an explanation; or (ii) receives a written notice from the appraiser asking to be removed or a notice of the death or incapacity of the appraiser. The AMC would retain these notices in its files.

Burden Estimates:

Total Number of Respondents: 500 AMCs, 55 States.

Bureau: Since the Bureau is merely adopting a cross-reference in Regulation Z to the OCC regulatory text, the Bureau is not imposing any new or additional information collection requirements on regulated entities. Therefore, the Bureau is not seeking OMB approval for the information collection requirements already accounted for by the other agencies' information collection requests submitted to OMB in association with this rule.

FDIC Burden Total: 1,545 hours.
FHFA Burden Total: 617 hours.
OCC Burden Total: 1,545 hours.
Board Burden Total: 1,545 hours.
Total Burden: 5,252 hours.

Regulatory Flexibility Act

OCC: The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* generally requires that, in connection with a rulemaking, an agency prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities. However, the regulatory flexibility analysis otherwise required under the RFA is not required if an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined in regulations promulgated by the Small Business Administration (SBA) to include commercial banks and savings institutions, and trust companies, with assets of $550 million or less and $38.5 million or less, respectively) and publishes its certification and a brief explanatory statement in the **Federal Register** together with the rule.

The OCC currently supervises 1,492 insured depository institutions (1,051 commercial banks and 441 Federal savings associations) of which approximately 1,090 are small entities based on the SBA's definition of small entities for RFA purposes. The OCC classifies the economic impact of total costs on a small entity as significant if the total costs in a single year are greater than 5 percent of total salaries and benefits, or greater than 2.5 percent of total non-interest expense.

As discussed in the **SUPPLEMENTARY INFORMATION** above, section 1473 of the Dodd-Frank Act requires the Agencies to jointly prescribe regulations to implement the minimum requirements for State registration and supervision of AMCs. The final rule meets this obligation by requiring States that elect to register and supervise AMCs to impose certain requirements on AMCs. The final rule also requires participating States to have certain basic supervisory authorities, such as the ability to investigate complaints against AMCs, and take disciplinary action with respect to AMCs that violate applicable laws.

The OCC believes the final rule will not have a significant economic impact on a substantial number of small entities for several reasons. First, the final rule imposes requirements primarily on States, not on national banks or Federal savings associations. Second, to the extent that the final rule imposes burden on national banks or Federal savings associations that own and control an AMC, there are only two such AMCs, and these are owned by large national banks. For these reasons, the OCC believes that the final rule will not have an impact on a substantial number of OCC-supervised small entities. Therefore, the OCC certifies that the final rule would not have a significant economic impact on a substantial number of small entities.

Board: The RFA, 5 U.S.C. 601 *et seq.,* requires an agency to provide and make available for public comment a regulatory flexibility analysis that describes the impact of a proposed rule

on small entities. However, a regulatory flexibility analysis is not required, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined in regulations of the SBA to include banking organizations (commercial banks, savings institutions, and trust companies)) with total assets of less than or equal to $550 million and publishes its certification and a short explanatory statement in the **Federal Register** together with the rule.[120] Based on its analysis, and for the reasons stated below, the Board believes that the final rule will not have a significant economic impact on a substantial number of small entities.

The AMC Rule applies to States that elect to establish licensing and certifying authorities to regulate AMCs. In the Board's regulatory flexibility analysis for this Rule, the Board determined that approximately 32 entities would be subject to direct regulation and supervision by Federal financial institutions regulatory agencies. These entities would be subject to direct regulation and supervision under the Rule because the entities are Federally regulated AMCs. The number of these 32 entities that actually would be subject to regulation under the AMC Rule is currently unknown because some of the entities may have a network or panel of contract appraisers that is too small to satisfy a threshold requirement of the AMC Rule and therefore would be exempt from regulation and supervision under the AMC Rule.

Data currently available to the Board indicate that approximately five State member banks operate a Federally regulated AMC. Data available to the Board are not sufficient to estimate how many of the approximately five entities subject to Board regulation and supervision would be classified as ''small entities.''

Generally, the RFA requires an agency to perform a regulatory flexibility analysis of small entity impacts only when the agency's rule directly regulates the small entities. The impact of this final rule on small entities is indirect. This final rule does not impose directly any significant new recordkeeping, reporting, or compliance requirements on small entities, but instead requires participating States to impose certain requirements on AMCs. The final rule also requires participating States to have certain basic supervisory capabilities, such as the ability to investigate complaints against AMCs, and take disciplinary action with respect to AMCs that violate applicable laws and regulations.

Moreover, while certain minimum requirements are imposed on participating States by the language of section 1473 of the Dodd-Frank Act, each State may establish requirements in addition to those required by section 1473. Furthermore, an entity with a network or panel of appraisers that does not meet the numerical test specified in section 1473 may *voluntarily* register with a participating state and the ASC, thus incurring some nominal expenses in establishing and maintaining the required registration information and meeting the minimum operational requirements. Because of these uncertainties, calculation of the impact of the final rule on the average Board-supervised institution or entity is uncertain, although the number of Board-supervised entities directly subject to supervision under the Rule is expected to be less than five.

Based on its analysis, and for the reasons stated above, the Board certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

FDIC: The RFA generally requires that, in connection with a rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis (IRFA) that describes the impact of the final rule on small entities.[121] A regulatory flexibility analysis is not required, however, if the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities (defined in regulations promulgated by the SBA to include banking organizations with total assets of less than or equal to $550 million) and publishes its certification and a short, explanatory statement in the **Federal Register** together with the final rule.

As of September 30, 2014, there were approximately 3,451 small FDIC-supervised institutions, which include 3,167 State nonmember banks and 284 State-chartered savings institutions. The FDIC analyzed the organizational structure information in the Board of Governors of the Federal Reserve System's National Information Center database. This analysis found that few FDIC-supervised institutions owned or controlled an entity that provides the types of appraisal management services specified in section 1473. Of these institutions, none oversees a network or panel of appraisers that meets the statutory panel size threshold specified in section 1473 for an entity to be an AMC. Therefore, the final rule would not have any impact on any FDIC-supervised institutions. If any FDIC-supervised institution that owns or controls an entity with a network or panel of appraisers that does not meet the statutory panel size threshold specified in section 1473 *voluntarily* decides to register that entity with the States, then the institution may incur some nominal expenses in establishing and maintaining a process for providing the required registration information and meeting the minimum operational requirements.

In addition, the final rule implements the minimum requirements for States to register and supervise AMCs as required by section 1473 of the Dodd-Frank Act. The final rule meets this obligation by requiring States that elect to register and supervise AMCs to impose certain requirements on AMCs. The final rule also requires participating States to have certain basic supervisory authorities, such as the ability to investigate complaints against AMCs and take disciplinary action with respect to AMCs that violate applicable laws.

It is the opinion of the FDIC that the final rule will not have a significant economic impact on a substantial number of small entities that it regulates in light of the fact that no FDIC-supervised institutions own or control an entity with a network or panel of appraisers that meets the statutory panel size threshold specified in section 1473 for an entity to be an AMC. In addition, the final rule imposes requirements primarily on States and not on FDIC-supervised institutions. Accordingly, the FDIC certifies that the final rule would not have a significant economic impact on a substantial number of small entities. Thus, a regulatory flexibility analysis is not required.

Bureau: The RFA generally requires an agency to conduct an IRFA and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[122]

[120] U.S. Small Business Administration, Table of Small Business Size Standards Matched to North American Industry Classification System Codes, *available at https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.*

[121] *See* 5 U.S.C. 601 *et seq.*

[122] For purposes of assessing the impacts of the proposed rule on small entities, ''small entities'' is defined in the RFA to include small businesses, small not-for-profit organizations, and small government jurisdictions. 5 U.S.C. 601(6). A ''small business'' is determined by application of SBA regulations and reference to the North American Industry Classification System (NAICS) classifications and size standards. 5 U.S.C. 601(3). A ''small organization'' is any ''not-for-profit enterprise which is independently owned and

Continued

An FRFA is not required because this rule will not have a significant economic impact on a substantial number of small entities.

This final rule implements the minimum requirements to be applied by participating States in the registration and supervision of AMCs, as well as requirements directly applicable to Federally regulated AMCs. The Bureau notes that the final rule does not impose requirements on AMCs (other than Federally regulated AMCs), but instead seeks to encourage States to adopt minimum requirements in their regulation of AMCs. Burden may be generated from the States' exercise of discretion to implement the final rule, based on the States having the option to decline to participate. The Bureau does not view this as burden resulting from the rule itself, however. Nonetheless, to inform the rulemaking and to inform the public, the Bureau exercised its discretion to analyze economic impacts that will be imposed on AMCs by States that implement final rule.[123] For this purpose, the Bureau assumed States that have not yet passed an AMC licensing and registration law (17 States, as of November 2014) would all elect to pass such a law and establish an AMC licensing and supervision program that satisfies the standards of the final rule. This assumption is taken to establish an outer bound. Because the final rule does not require States to adopt the minimum requirements in the final rule, however, it is possible that not all 17 States (as defined in the final rule) would do so.[124]

Various commenters expressed their concerns with State and Federal fees that may be instituted in connection with AMC registration and supervision. This rule does not determine fee amounts for States to charge, require collection of registration fees by the ASC, or authorize the collection of such ASC fees. It instead provides minimum requirements for States to use to regulate AMCs within the State. How a State chooses to implement these requirements, including which if any new State fees to charge, is within the discretion of the States. With respect to the ASC registration fee, the Dodd-Frank Act grants authority to set that fee exclusively to the ASC.[125] Therefore, the Bureau does not consider any fees imposed on AMCs by the ASC (whether directly or through the States for forwarding to the ASC) as an impact of the final rule.

A national association commented explicitly on the fees that AMCs would pay and the fees' effect on consumers:

''150+− AMCs, $2,500 average fee per State (includes application fee, surety bond fees, background checks, secretary of State application fees, administration fees, and etc.)

150 AMCs × $2,500 × 50 States = $18,750,000.00

150 AMCs × 2500 appraisers × $50 ASC fee = $18,750,000.00.''

The Bureau's analysis differs from the commenter's in several ways. First, for the purposes of RFA, the Bureau is concerned only with smaller AMCs, and an AMC with 2,500 appraisers that operates in all 50 States is unlikely to be small under the SBA definition that would include only AMCs with yearly revenues below $7,500,000. Second, the Bureau does not count as a burden imposed by the final rule those registration fees in States that already established AMC registration regimes before adoption of the final rule; thus the multiplier in the first calculation should be 17 rather than 50. Third, the Bureau assumes for its base calculations that only the minimum State rate is caused by the rule (Vermont's $250 fee), thus the multiplier is $250 instead of $2,500. Finally, as mentioned above, the Bureau does not include the ASC fee or, in other words the third line overall (which in any event assumes a fee amount that the ASC has not yet established). Note that the Bureau's use of the minimum State rate for its base calculation of impacts does not imply that the Bureau suggests that the remaining 17 States adopt this rate.

Commenters also discussed the impact of the rule on States and the burden that may result with the implementation of the final rule. While the Bureau acknowledges these comments, for the purposes of making a determination under the RFA, the impact of the final rule on the States is not incorporated into the FRFA because States are not classified as small entities.

As discussed in the proposed rulemaking, State registration fees in States that have not yet passed an AMC licensing and registration law would constitute the primary economic impact of the final rule. As also noted in the proposed rule, such fees in States that have established such laws vary widely. Such State registration and renewal fees are not necessarily for the sole purpose of recovering costs of administering the minimum requirements under the final rule. States can impose charges for a variety of reasons, including to raise revenue (independent of the cost of the registration regime) or to fund the administration of a regime that exceeds the minimum requirements under the final rule. The Bureau believes that the fee charged by Vermont—$125 for registration and $250 for annual renewal—would be sufficient to recover the cost of implementing the final rule in a newly-participating State.[126] The Bureau therefore considered this fee in estimating the economic impact of the final rule in the 17 States that do not yet have AMC registration requirements. As discussed further below, however, the Bureau also considered more

operated and is not dominant in its field.'' 5 U.S.C. 601(4). A ''small governmental jurisdiction'' is the government of a city, county, town, township, village, school district, or special district with a population of less than 50,000. 5 U.S.C. 601(5). Given this definition, participating States are not small governmental jurisdictions and the burden on them is not relevant to this analysis.

[123] The Bureau does not assume costs associated with the final rule's requirements to ensure compliance with USPAP and other regulations, because AMCs would be subject to these standards even without their being referenced in the final rule.

[124] A State could accept the consequences on AMCs' business in the State from not implementing the final rule. FIRREA section 1124(f) provides that three years after the final rule takes effect, AMCs cannot provide services in Federally related transactions unless and until a State has implemented the final rule. However, the Bureau understands that only a minority of mortgage transactions are ''Federally related transactions'' within the meaning of FIRREA. *See, e.g.,* 12 CFR 225.62(f) (transaction must ''[r]equire the services of an appraiser'' to be federally related). *But see id.* at § 225.63(a)(1),(9),(10) (exemptions from FIRREA appraisal requirements for transactions of $250,000 or less, transactions insured by or sold to a U.S. government agency, and transactions that conform to GSE appraisal standards). However, the Bureau believes all States will choose to participate. Several industry comments expressed concerns with the possible consequences if States did not participate. These comments did not establish that it was likely that States would not do so, however. Thus, the Bureau continues to rely on the assumption that the remaining States will choose to participate either within three years or soon thereafter. However, even if this is not the case, the transactions affected until a State did participate would be portfolio loans over $250,000 that are not insured by either the Federal Housing Administration (FHA), the U.S. Department of Veterans Affairs (VA), or the United States Department of Agriculture Rural Housing Service (USDA RHS). These loans represent a small percentage of the market, and therefore inability by certain market participants (certain types of AMCs) to provide appraisal management services in these types of transactions in a non-participating State will not result in a significant economic impact on a substantial number of small entities.

[125] *See* 12 U.S.C. 3338. This provision in FIRREA is not part of the joint rulemaking authority in section 1124 that is the basis for the Agencies' issuance of this final rule.

[126] The application fee in Vermont is $125. *See https://www.sec.state.vt.us/media/188701/amc_application.pdf.* The annualized renewal fee is $250 ($500 for a two-year period). *See https://www.sec.state.vt.us/media/486847/Appraisal-Management-Company-Renewal-Form-077-2014.pdf.* In addition, while some States may elect to impose additional requirements relating to examination and inspection of their AMCs, the Bureau does not believe that the minimum requirements that States must provide would lead to significant costs for AMCs.

conservative estimates of the impact of the final rule using significantly higher fee amounts. The Bureau believes that the 38 States that already have AMC registration requirements would have to do minimal, if any, updating of the requirements due to this rule, as discussed in the preamble. Thus, the Bureau believes that the rule's indirect burden on the AMCs operating in these 38 States is negligible.

As noted in the section-by-section analysis, it is possible that an appraisal firm, which hires employees to perform appraisals, could also oversee more than 15 appraisers engaged as independent contractors in a State, or 25 or more appraisers in two or more States, in a given year. Comments did not establish that such firms—described in the section-by-section analysis as 'hybrid firms'—currently exist to any meaningful extent. The Bureau believes that to the extent such firms do exist, they are either already included in what the Bureau has counted as an AMC, or the firm is unlikely to be considered ''small'' within the meaning of the RFA.

An additional requirement in the final rule is that the State AMC licensing programs have authority and mechanisms to examine books and records of the AMCs, to otherwise obtain information from the AMCs, and to discipline AMCs. The Bureau believes that existing State registration fees generally already account for the cost to the States of having such authority and mechanisms, and that the requirement in the final rule therefore would not lead to higher registration fees in any significant amount.[127] Accordingly, in the 17 States that would adopt new registration and renewal systems, the Bureau believes the renewal fee currently charged in Vermont would cover the State's cost associated with implementing this requirement.

The Bureau notes that the final rule is not prescriptive as to how or when the States must exercise the authority or mechanisms. Exercise of such authority and mechanisms is determined at the discretion of the States, subject to monitoring by the ASC for effectiveness in the judgment or discretion of the ASC. Accordingly, to the extent that State exercise of such authority and mechanisms leads to burden on small entities, such burden would be attributable to such State implementation and/or ASC oversight expectations rather than to the final rule itself. Therefore, State statutes that implement this requirement relating to establishing examination authority and mechanisms are not expected to cause fee increases or new burden above the $250 overall baseline that is assumed for purposes of this analysis.[128]

Similarly, the Bureau believes that other minimum requirements for AMCs under the final rule (verifying the use of licensed or certified status of appraisers, requiring that appraisers comply with USPAP, complying with any contractual review provisions, and establishing and complying with processes to ensure appraisers are qualified and independent and that the AMC acts in compliance with applicable valuation independence regulations), as well as the standard for removing appraisers from the appraiser panel, would not result in new burden on AMCs because these standards merely reinforce existing compliance requirements as well as industry practice.[129] The Bureau further notes that States have discretion to interpret the requirements to establish processes and controls to ensure compliance, subject to monitoring by the ASC for effectiveness in the judgment or discretion of the ASC. Accordingly, to the extent that State interpretations of such requirements leads to burden on small entities, such burden would be attributable to such State implementation and/or ASC oversight expectations rather than to the final rule itself.

Just as these conduct standards would not impose a significant burden on AMCs required to register at the State level, the Bureau does not believe they would impose significant burdens on Federally regulated AMCs either. *See* Interagency Appraisal and Evaluation Guidelines, 75 FR 77450 (Dec. 10, 2010) (Interagency Guidelines). The Interagency Guidelines, part VI, already require Federal financial institutions, when obtaining required appraisals, to select appraisers who are certified or licensed, qualified, in compliance with USPAP, and independent. 75 FR at 77458. Federally regulated AMCs frequently perform appraisals for their affiliates. Therefore, it can be assumed that in delegating these functions to AMCs, these Federal financial institutions also delegated these requirements from part VI of the Interagency Guidelines to these AMCs.

To estimate the impact of the final rule on small AMCs, the Bureau conducted a survey. The Bureau called nine AMCs, selected randomly from a list of approximately 500 AMCs provided by industry trade associations. The AMCs were asked for certain basic data including the number of States in which they operate, their revenue (including the revenue from any non-appraisal business), and the number of appraisals that they performed in 2012.[130] The Bureau estimated the revenue to be the number of appraisals performed in 2012 multiplied by $350—the average appraisal cost assumed in the Agencies' analysis under section 1022 of the Dodd-Frank Act in the 2013 Interagency Appraisals Rule. This revenue estimate is likely to be underestimated, given that several AMCs out of nine reported additional revenue that was not due to the residential appraisal business. Out of the nine AMCs, six had revenues of less than $7,500,000 in 2012, and thus would be within the scope of the RFA analysis based upon SBA guidelines.[131] The Bureau computed the cost of registration and renewal fees in States that do not already have them, allocated these costs to individual AMCs based upon the number of States in which the AMC operated,[132] and computed the ratio of these allocated costs to the AMCs' revenues.

[127] *See, e.g.,* Vermont Statutes Title 26 section 3324 (requiring AMCs to ''retain all records related to an appraisal, review, or consulting assignment for no less than five years . . . [and w]ith reasonable notice, a licensee or registrant shall produce any records governed by this section for inspection and copying by the board or its authorized agent.'').

[128] In addition, the Bureau does not believe that in States that add this requirement there will be any significant new burden on the AMCs. The Bureau believes that the AMCs already keep their books and records in order as a standard course of business practice, and thus the occasional State examiner visits should not impose any significant burden. In addition, the final rule requires only that the State have the authority and mechanism to request records and information. The final rule does not require that the State exercise this authority and any burdensome exercise of this authority would therefore not be caused by the final rule. Finally, to the extent State supervision programs do increase burden, the Bureau believes this burden would be within the sensitivity tolerances described in the footnote at the end of this section.

[129] These requirements also would not result in new burden on Federally regulated AMCs, for the same reason. Federally regulated AMCs do not have to comply with State registration and renewal requirements, which can entail fees. Conservatively, however, the Bureau applied the State fee burden to all of the small AMCs in its calculation method described herein. As a result, the estimated burden of State fees associated with the final rule may be over-estimated.

[130] One of the AMCs did not report its revenue.

[131] NAICS code 531320—Offices of Real Estate Appraisers—includes ''appraisal services,'' which we believe would include services provided by AMCs in the processing and review of appraisals. An alternative classification would be NAICS code 561110—Office Administrative Services. In any event, this code also has an SBA threshold of $7,500,000.

[132] The Bureau assumed that an AMC that operated in x States needs to register in additional (17/55)*x States. This assumption results in a (17/55)*x*$250 State registration and renewal fee burden on an AMC operating in x States.

The Bureau acknowledges that requiring AMCs to send letters to the appraisers that the AMC decides to remove from its panel might add burden in States that do not already have registration requirements (which typically include notice provisions). The Bureau does not possess any evidence on the number of appraisers to whom an AMC would have to send these letters. According to the Bureau of Labor and Statistics' August 2014 preliminary numbers, 1.9 percent of the labor force in the real estate and rental and leasing industry was either laid off or discharged in the most recent month. Thus, the Bureau estimates that an AMC will dismiss approximately a quarter of appraisers from its panel in any given year. The Bureau assumes that each AMC will have several standardized letters explaining the reason for dismissal: for example, changing economic conditions or the appraiser's violation of USPAP or work performance issues. Each AMC might incur a minimal one-time cost to draft these letters, with some industry associations potentially providing templates. After this minimal one-time cost is incurred, the ongoing cost would include a minimal adjustment of the letter based on the appraiser's particular circumstances and the actual printing and mailing cost. These letters also could be sent in batches, periodically, such as on an annual basis. Thus, for the purposes of this analysis, the Bureau implicitly accounts for these costs in the sensitivity analyses below (which use a State fee of $5,150 and include a $300 administrative expense).

The Bureau then fit the received ratios using three different distributions: normal, generalized extreme value, and logistic. The three different distributions were used because no a priori assumptions regarding how these ratios are distributed can be made. The three distributions mentioned above are commonly used by empirical researchers to fit observed values. Considering the costs imposed by the States as a result of the final rule, the Bureau believes that less than 1 percent of the small entities would experience a cost of over 1 percent of their revenue, using either the normal, or the logistic, or the generalized extreme value distributions.[133] The Bureau also notes that because the sample did not include any AMCs that were either too small (for example, with 15 or fewer appraisers in one State) or that were Federally regulated AMCs, these estimates are likely overstated.

Certification

Accordingly, the Bureau Director, by signing below, certifies that this final rule would not have a significant economic impact on a substantial number of small entities.

FHFA: The RFA (5 U.S.C. 601 *et seq.*) requires an agency to analyze a proposed regulation's impact on small entities if the final rule is expected to have a significant economic impact on a substantial number of small entities.[134] A regulatory flexibility analysis is not required if the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short statement in the **Federal Register** together with the final rule.

The rule implements section 1124 of FIRREA and establishes minimum requirements to be imposed by a participating State appraiser certifying and licensing agency on AMCs doing business in the State. FHFA has considered the impact of this regulation and determined that it is not likely to have a significant economic impact on a substantial number of small entities because States and FHFA's regulated entities—Fannie Mae, Freddie Mac, and the Federal Home Loan Banks—are not small entities for purposes of the RFA. *See* 5 U.S.C. 601(6).

NCUA: The RFA[135] requires NCUA to provide a regulatory flexibility analysis to certify that a rulemaking will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include credit unions with assets less than $50 million) and publish its certification and a short explanatory statement in the **Federal Register** with the final rule.[136] As explained above, the requirements of this rule would only apply directly to AMC subsidiaries owned and controlled by an insured depository institution, or an insured credit union, *and* regulated by a Federal financial institutions regulatory agency. NCUA, unlike the other banking agencies to this rulemaking, does not directly oversee or regulate any subsidiaries owned and controlled by credit unions, including AMC subsidiaries. Rather, NCUA's regulations permit Federal credit unions to invest in or lend only to CUSOs that conform to specific requirements outlined in part 712 of the NCUA's regulations. Because NCUA does not directly regulate or oversee CUSOs owned by State or Federally chartered credit unions, NCUA is not adopting regulatory text or any requirements through this rulemaking that would directly affect small entities. Accordingly, the NCUA Board certifies the rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995 Determination

OCC: The OCC has analyzed the final rule under the factors in the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532). Under this analysis, the OCC considered whether the final rule includes Federal mandates that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted annually for inflation). For the following reasons, the OCC finds that the final rule does not trigger the $100 million UMRA threshold. First, the mandates in the final rule apply only to those States that choose to establish an AMC registration system. Second, the costs specifically related to requirements set forth in law are excluded from expenditures under the UMRA. Although the OCC estimates that expenditures by State governments could be $82 million in one year, the UMRA cost estimate for the final rule is zero, given that the final rule's mandates are set forth in section 1473. For this reason, and for the other reasons cited above, the OCC has determined that this final rule will not result in expenditures by State, local, and tribal governments, or the private sector, of $100 million or more in any one year. Accordingly, this

[133] The Bureau notes that the percentage of small institutions for which the estimated burden of the final rule would amount to over 3 percent of the revenue would remain under 1 percent even if the Bureau had used the following alternative assumptions: (1) $5,150 as the assumed burden of the proposed rule for states that adopt new registration regimes—the highest among the existing state registration fees (in Minnesota, per *http://mn.gov/elicense/licenses/licensedetail.jsp?URI=tcm:29-9313&CT_URI=tcm:27-117-32*), and assumed this same amount as the annual renewal fee (even though the Minnesota renewal fee is only $2,650, per *http://mn.gov/elicense/licenses/licensedetail.jsp?URI=tcm:29-9313&CT_URI=tcm:27-117-32*); and (2) an additional annual labor cost of $300 for any possible associated burden of (a) filling out registration and renewal forms in those states (assuming an AMC operates in approximately 20 states on average, such that 6.26 of those states adopt new AMC licensing programs) and any additional burden related to notices from small AMCs removing appraisers from their panels in those states. The percentages of institutions for which this cost would amount to over 1 percent of the revenue changed, respectively, to 26 percent, 18 percent, and 15 percent of the small institutions affected, according to the normal, generalized extreme value, and logistic distributions.

[134] 5 U.S.C. 605(b).

[135] 5 U.S.C. 601 *et seq.*

[136] 78 FR 4032 (Jan. 18, 2013).

final rule is not subject to section 202 of the UMRA.

List of Subjects

12 CFR Part 34

Appraisal, Appraiser, Banks, Banking, Consumer protection, Credit, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

12 CFR Part 208

Accounting, Agriculture, Banks, Banking, Confidential business information, Consumer protection, Crime, Currency, Insurance, Investments, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 225

Administrative practice and procedure, Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 323

Banks, Banking, Mortgages, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 1026

Advertising, Appraisal, Appraiser, Banks, Banking, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

12 CFR Part 1222

Appraisals, Government sponsored enterprises, Mortgages.

Department of the Treasury

Office of the Comptroller of the Currency

Authority and Issuance

For the reasons set forth in the preamble, the OCC is amending 12 CFR part 34 as follows:

PART 34—REAL ESTATE LENDING AND APPRAISALS

■ 1. The authority citation for part 34 is revised to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 25b, 29, 93a, 371, 1462a, 1463, 1464, 1465, 1701j–3, 1828(o), 3331 *et seq.,* 5101 *et seq.,* and 5412(b)(2)(B) and 15 U.S.C. 1639h.

■ 2. Subpart H to part 34 is added to read as follows:

Subpart H—Appraisal Management Company Minimum Requirements

Sec.

34.210 Authority, purpose, and scope.
34.211 Definitions.
34.212 Appraiser panel—annual size calculation.
34.213 Appraisal management company registration.
34.214 Ownership limitations for State-registered appraisal management companies.
34.215 Requirements for Federally regulated appraisal management companies.
34.216 Information to be presented to the Appraisal Subcommittee by participating States.

§ 34.210 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued by the Office of the Comptroller of the Currency under 12 U.S.C. 93a and Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA), as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) (Pub. L. 111–203, 124 Stat. 1376 (2010)), 12 U.S.C. 3331 *et seq.*

(b) *Purpose.* The purpose of this subpart is to implement sections 1109, 1117, 1121, and 1124 of FIRREA Title XI, 12 U.S.C. 3338, 3346, 3350, and 3353.

(c) *Scope.* This subpart applies to States and to appraisal management companies (AMCs) providing appraisal management services in connection with consumer credit transactions secured by a consumer's principal dwelling or securitizations of those transactions.

(d) *Rule of construction.* Nothing in this subpart should be construed to prevent a State from establishing requirements in addition to those in this subpart. In addition, nothing in this subpart should be construed to alter guidance in, and applicability of, the Interagency Appraisal and Evaluation Guidelines [3] or other relevant agency guidance that cautions banks, bank holding companies, Federal savings associations, state savings associations, and credit unions, as applicable, that each such entity is accountable for overseeing the activities of third-party service providers and ensuring that any services provided by a third party comply with applicable laws, regulations, and supervisory guidance applicable directly to the financial institution.

§ 34.211 Definitions.

For purposes of this subpart:

(a) *Affiliate* has the meaning provided in 12 U.S.C. 1841.

(b) *AMC National Registry* means the registry of State-registered AMCs and Federally regulated AMCs maintained by the Appraisal Subcommittee.

[3] *See http://www.occ.gov/news-issuances/bulletins/2010/bulletin-2010-42.html.*

(c)(1) *Appraisal management company* (AMC) means a person that:

(i) Provides appraisal management services to creditors or to secondary mortgage market participants, including affiliates;

(ii) Provides such services in connection with valuing a consumer's principal dwelling as security for a consumer credit transaction or incorporating such transactions into securitizations; and

(iii) Within a given 12-month period, as defined in § 34.212(d), oversees an appraiser panel of more than 15 State-certified or State-licensed appraisers in a State or 25 or more State-certified or State-licensed appraisers in two or more States, as described in § 34.212;

(2) An AMC does not include a department or division of an entity that provides appraisal management services only to that entity.

(d) *Appraisal management services* means one or more of the following:

(1) Recruiting, selecting, and retaining appraisers;

(2) Contracting with State-certified or State-licensed appraisers to perform appraisal assignments;

(3) Managing the process of having an appraisal performed, including providing administrative services such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and secondary market participants, collecting fees from creditors and secondary market participants for services provided, and paying appraisers for services performed; and

(4) Reviewing and verifying the work of appraisers.

(e) *Appraiser panel* means a network, list or roster of licensed or certified appraisers approved by an AMC to perform appraisals as independent contractors for the AMC. Appraisers on an AMC's ''appraiser panel'' under this part include both appraisers accepted by the AMC for consideration for future appraisal assignments in covered transactions or for secondary mortgage market participants in connection with covered transactions and appraisers engaged by the AMC to perform one or more appraisals in covered transactions or for secondary mortgage market participants in connection with covered transactions. An appraiser is an independent contractor for purposes of this subpart if the appraiser is treated as an independent contractor by the AMC for purposes of Federal income taxation.

(f) *Appraisal Subcommittee* means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(g) *Consumer credit* means credit offered or extended to a consumer primarily for personal, family, or household purposes.

(h) *Covered transaction* means any consumer credit transaction secured by the consumer's principal dwelling.

(i) *Creditor* means:

(1) A person who regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments (not including a down payment), and to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract.

(2) A person regularly extends consumer credit if the person extended credit (other than credit subject to the requirements of 12 CFR 1026.32) more than 5 times for transactions secured by a dwelling in the preceding calendar year. If a person did not meet these numerical standards in the preceding calendar year, the numerical standards shall be applied to the current calendar year. A person regularly extends consumer credit if, in any 12-month period, the person originates more than one credit extension that is subject to the requirements of 12 CFR 1026.32 or one or more such credit extensions through a mortgage broker.

(j) *Dwelling* means:

(1) A residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence.

(2) A consumer can have only one ''principal'' dwelling at a time. Thus, a vacation or other second home would not be a principal dwelling. However, if a consumer buys or builds a new dwelling that will become the consumer's principal dwelling within a year or upon the completion of construction, the new dwelling is considered the principal dwelling for purposes of this section.

(k) *Federally regulated AMC* means an AMC that is owned and controlled by an insured depository institution, as defined in 12 U.S.C. 1813 and regulated by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation.

(l) *Federally related transaction regulations* means regulations established by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, or the National Credit Union Administration, pursuant to sections 1112, 1113, and 1114 of FIRREA Title XI, 12 U.S.C. 3341–3343.

(m) *Person* means a natural person or an organization, including a corporation, partnership, proprietorship, association, cooperative, estate, trust, or government unit.

(n) *Secondary mortgage market participant* means a guarantor or insurer of mortgage-backed securities, or an underwriter or issuer of mortgage-backed securities. Secondary mortgage market participant only includes an individual investor in a mortgage-backed security if that investor also serves in the capacity of a guarantor, insurer, underwriter, or issuer for the mortgage-backed security.

(o) *States* mean the 50 States and the District of Columbia and the territories of Guam, Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

(p) *Uniform Standards of Professional Appraisal Practice* (USPAP) means the appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation.

§ 34.212 Appraiser panel—annual size calculation.

For purposes of determining whether, within a 12-month period, an AMC oversees an appraiser panel of more than 15 State-certified or State-licensed appraisers in a State or 25 or more State-certified or State-licensed appraisers in two or more States pursuant to § 34.211(c)(1)(iii)—

(a) An appraiser is deemed part of the AMC's appraiser panel as of the earliest date on which the AMC:

(1) Accepts the appraiser for the AMC's consideration for future appraisal assignments in covered transactions or for secondary mortgage market participants in connection with covered transactions; or

(2) Engages the appraiser to perform one or more appraisals on behalf of a creditor for a covered transaction or secondary mortgage market participant in connection with covered transactions.

(b) An appraiser who is deemed part of the AMC's appraiser panel pursuant to paragraph (a) of this section is deemed to remain on the panel until the date on which the AMC:

(1) Sends written notice to the appraiser removing the appraiser from the appraiser panel, with an explanation of its action; or

(2) Receives written notice from the appraiser asking to be removed from the appraiser panel or notice of the death or incapacity of the appraiser.

(c) If an appraiser is removed from an AMC's appraiser panel pursuant to paragraph (b) of this section, but the AMC subsequently accepts the appraiser for consideration for future assignments or engages the appraiser at any time during the twelve months after the AMC's removal, the removal will be deemed not to have occurred, and the appraiser will be deemed to have been part of the AMC's appraiser panel without interruption.

(d) The period for purposes of counting appraisers on an AMC's appraiser panel may be the calendar year or a 12-month period established by law or rule of each State with which the AMC is required to register.

§ 34.213 Appraisal management company registration.

Each State electing to register AMCs pursuant to paragraph (b)(1) of this section must:

(a) Establish and maintain within the State appraiser certifying and licensing agency a licensing program that is subject to the limitations set forth in § 34.214 and with the legal authority and mechanisms to:

(1) Review and approve or deny an AMC's application for initial registration;

(2) Review and renew or review and deny an AMC's registration periodically;

(3) Examine the books and records of an AMC operating in the State and require the AMC to submit reports, information, and documents;

(4) Verify that the appraisers on the AMC's appraiser panel hold valid State certifications or licenses, as applicable;

(5) Conduct investigations of AMCs to assess potential violations of applicable appraisal-related laws, regulations, or orders;

(6) Discipline, suspend, terminate, or deny renewal of the registration of an AMC that violates applicable appraisal-related laws, regulations, or orders; and

(7) Report an AMC's violation of applicable appraisal-related laws, regulations, or orders, as well as disciplinary and enforcement actions and other relevant information about an AMC's operations, to the Appraisal Subcommittee.

(b) Impose requirements on AMCs that are not owned and controlled by an insured depository institution and not regulated by a Federal financial institutions regulatory agency to:

(1) Register with and be subject to supervision by the State appraiser certifying and licensing agency;

(2) Engage only State-certified or State-licensed appraisers for Federally related transactions in conformity with any Federally related transaction regulations;

(3) Establish and comply with processes and controls reasonably

designed to ensure that the AMC, in engaging an appraiser, selects an appraiser who is independent of the transaction and who has the requisite education, expertise, and experience necessary to competently complete the appraisal assignment for the particular market and property type;

(4) Direct the appraiser to perform the assignment in accordance with USPAP; and

(5) Establish and comply with processes and controls reasonably designed to ensure that the AMC conducts its appraisal management services in accordance with the requirements of section 129E(a) through (i) of the Truth in Lending Act, 15 U.S.C. 1639e(a) through (i), and regulations thereunder.

§ 34.214 Ownership limitations for State-registered appraisal management companies.

(a) *Appraiser certification or licensing of owners.* (1) An AMC subject to State registration pursuant to § 34.213 shall not be registered by a State or included on the AMC National Registry if such AMC, in whole or in part, directly or indirectly, is owned by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State for a substantive cause, as determined by the appropriate State appraiser certifying and licensing agency.

(2) An AMC subject to State registration pursuant to § 34.213 is not barred by paragraph (a)(1) of this section from being registered by a State or included on the AMC National Registry if the license or certificate of the appraiser with an ownership interest was not revoked for a substantive cause and has been reinstated by the State or States in which the appraiser was licensed or certified.

(b) *Good moral character of owners.* An AMC shall not be registered by a State if any person that owns more than 10 percent of the AMC—

(1) Is determined by the State appraiser certifying and licensing agency not to have good moral character; or

(2) Fails to submit to a background investigation carried out by the State appraiser certifying and licensing agency.

§ 34.215 Requirements for Federally regulated appraisal management companies.

(a) *Requirements in providing services.* To provide appraisal management services for a creditor or secondary mortgage market participant relating to a covered transaction, a Federally regulated AMC must comply with the requirements in § 34.213(b)(2) through (5).

(b) *Ownership limitations.* (1) A Federally regulated AMC shall not be included on the AMC National Registry if such AMC, in whole or in part, directly or indirectly, is owned by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State for a substantive cause, as determined by the Appraisal Subcommittee.

(2) A Federally regulated AMC is not barred by this paragraph (b) from being included on the AMC National Registry if the license or certificate of the appraiser with an ownership interest was not revoked for a substantive cause and has been reinstated by the State or States in which the appraiser was licensed or certified.

(c) *Reporting information for the AMC National Registry.* A Federally regulated AMC must report to the State or States in which it operates the information required to be submitted by the State to the Appraisal Subcommittee, pursuant to the Appraisal Subcommittee's policies regarding the determination of the AMC National Registry fee, including but not necessarily limited to the collection of information related to the limitations set forth in this section, as applicable.

§ 34.216 Information to be presented to the Appraisal Subcommittee by participating States.

Each State electing to register AMCs for purposes of permitting AMCs to provide appraisal management services relating to covered transactions in the State must submit to the Appraisal Subcommittee the information required to be submitted by Appraisal Subcommittee regulations or guidance concerning AMCs that operate in the State.

Board of Governors of the Federal Reserve System

For the reasons set forth in the preamble, the Board amends 12 CFR parts 208 and 225, as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

■ 3. The authority citation for part 208 is revised to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1833(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1831w, 1831x, 1835a, 1882, 2901–2907, 3105, 3310, 3331–3351, 3353, and 3905–3909; 15 U.S.C. 78b, 78l(b), 78l(i), 780–4(c)(5), 78q, 78q–1, 78w, 1681s, 1681w, 6801 and 6805; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104b, 4106, and 4128.

■ 4. Revise the heading of subpart E to read as follows:

Subpart E—Real Estate Lending, Appraisal Standards, and Minimum Requirements for Appraisal Management Companies

■ 5. Section 208.50 is revised to read as follows:

§ 208.50 Authority, purpose, and scope.

(a) *Authority.* Subpart E of Regulation H (12 CFR part 208, subpart E) is issued by the Board of Governors of the Federal Reserve System pursuant to section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991, (12 U.S.C 1828(o)), Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act, (12 U.S.C 3331–3351), and section 1473 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, (12 U.S.C. 3353).

(b) *Purpose and scope.* This subpart prescribes standards for real estate lending to be used by state member banks in adopting internal real estate lending policies. The standards applicable to appraisals rendered in connection with Federally related transactions entered into by member banks and the minimum requirements for appraisal management companies are set forth in 12 CFR part 225, subparts G and M respectively (Regulation Y).

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

■ 6. The authority citation for part 225 is revised to read as follows:

Authority: 12 U.S.C. 1844(b), 3106 and 3108, 1817(j)(13), 1818(b), 1831i, 1972, 3310, 3331–3351 and 3353; 12 U.S.C. 3901, *et seq.;* and 12 U.S.C. 1841, *et seq.*

■ 7. Subpart M is added to part 225 to read as follows:

Subpart M—Minimum Requirements for Appraisal Management Companies

Sec.

225.190 Authority, purpose, and scope.
225.191 Definitions.
225.192 Appraiser panel—annual size calculation.
225.193 Appraisal management company registration.
225.194 Ownership limitations for State-registered appraisal management companies.
225.195 Requirements for Federally regulated appraisal management companies.

225.196 Information to be presented to the Appraisal Subcommittee by participating States.

§ 225.190 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued by the Board of Governors of the Federal Reserve System (the Board) pursuant to title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (Pub. L. 101–73, 103 Stat. 183 (1989)), 12 U.S.C. 3310, 3331–3351, section 1473 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. 3353, and section 5(b) of the Bank Holding Company Act, 12 U.S.C. 1844(b).

(b) *Purpose and scope.* (1) The purpose of this subpart is to implement sections 1109, 1117, 1121, and 1124 of FIRREA Title XI, 12 U.S.C. 3338, 3346, 3350, and 3353. Title XI provides protection for Federal financial and public policy interests in real estate related transactions by requiring real estate appraisals used in connection with Federally related transactions to be performed in writing, in accordance with uniform standards, by appraisers whose competency has been demonstrated and whose professional conduct will be subject to effective supervision. This subpart implements the requirements of title XI as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act and applies to all Federally related transactions and to States and to appraisal management companies (AMCs) performing appraisal management services in connection with consumer credit transactions secured by a consumer's principal dwelling or securitizations of those transactions.

(2) This subpart:

(i) Identifies which real estate related financial transactions require the services of an appraiser.

(ii) Prescribes which categories of Federally related transactions shall be appraised by a State-certified appraiser and which by a State-licensed appraiser;

(iii) Prescribes minimum standards for the performance of real estate appraisals in connection with Federal related transactions under the jurisdiction of the Board;

(iv) Prescribes minimum requirements to be applied by participating States in the registration and supervision of AMCs; and

(v) Prescribes minimum requirements to be applied by participating States to report certain information concerning AMCs registered with the States to a national registry of AMCs.

(c) *Rule of construction.* Nothing in this subpart should be construed to prevent a State from establishing requirements in addition to those in this subpart. In addition, nothing in this subpart should be construed to alter guidance in, and applicability of, the Interagency Appraisal and Evaluation Guidelines [1] or other relevant agency guidance that cautions banks and bank holding companies, that each organization is accountable for overseeing the activities of third-party service providers and ensuring that any services provided by a third party comply with applicable laws, regulations, and supervisory guidance applicable directly to the creditor.

§ 225.191 Definitions.

For purposes of this subpart:

(a) *Affiliate* has the meaning provided in 12 U.S.C. 1841.

(b) *AMC National Registry* means the registry of State-registered AMCs and Federally regulated AMCs maintained by the Appraisal Subcommittee.

(c) *Appraisal Foundation* means the Appraisal Foundation established on November 30, 1987, as a not-for-profit corporation under the laws of Illinois.

(d)(1) *Appraisal management company* (AMC) means a person that:

(i) Provides appraisal management services to creditors or to secondary mortgage market participants, including affiliates;

(ii) Provides such services in connection with valuing a consumer's principal dwelling as security for a consumer credit transaction or incorporating such transactions into securitizations; and

(iii) Within a 12-month period, as defined in § 225.192(d), oversees an appraiser panel of more than 15 State-certified or State-licensed appraisers in a State or 25 or more State-certified or State-licensed appraisers in two or more States, as described in § 225.192;

(2) An AMC does not include a department or division of an entity that provides appraisal management services only to that entity.

(e) *Appraisal management services* means one or more of the following:

(1) Recruiting, selecting, and retaining appraisers;

(2) Contracting with State-certified or State-licensed appraisers to perform appraisal assignments;

(3) Managing the process of having an appraisal performed, including providing administrative services such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and secondary market participants, collecting fees from creditors and secondary market participants for services provided, and paying appraisers for services performed; and

(4) Reviewing and verifying the work of appraisers.

(f) *Appraiser panel* means a network, list or roster of licensed or certified appraisers approved by an AMC to perform appraisals as independent contractors for the AMC. Appraisers on an AMC's ''appraiser panel'' under this part include both appraisers accepted by the AMC for consideration for future appraisal assignments in covered transactions or for secondary mortgage market participants in connection with covered transactions and appraisers engaged by the AMC to perform one or more appraisals in covered transactions or for secondary mortgage market participants in connection with covered transactions. An appraiser is an independent contractor for purposes of this part if the appraiser is treated as an independent contractor by the AMC for purposes of Federal income taxation.

(g) *Consumer credit* means credit offered or extended to a consumer primarily for personal, family, or household purposes.

(h) *Covered transaction* means any consumer credit transaction secured by the consumer's principal dwelling.

(i) *Creditor* means:

(1) A person who regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments (not including a down payment), and to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract.

(2) A person regularly extends consumer credit if the person extended credit (other than credit subject to the requirements of 12 CFR 1026.32) more than 5 times for transactions secured by a dwelling in the preceding calendar year. If a person did not meet these numerical standards in the preceding calendar year, the numerical standards shall be applied to the current calendar year. A person regularly extends consumer credit if, in any 12-month period, the person originates more than one credit extension that is subject to the requirements of 12 CFR 1026.32 or one or more such credit extensions through a mortgage broker.

(j) *Dwelling* means:

(1) A residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit,

[1] *See,* Agencies issue final appraisal and evalutation guidelines, *http://www.federalreserve.gov/newsevents/press/bcreg/20101202a.htm.*

cooperative unit, mobile home, and trailer, if it is used as a residence.

(2) A consumer can have only one ''principal'' dwelling at a time. Thus, a vacation or other second home would not be a principal dwelling. However, if a consumer buys or builds a new dwelling that will become the consumer's principal dwelling within a year or upon the completion of construction, the new dwelling is considered the principal dwelling for purposes of this section.

(k) *Federally regulated AMC* means an AMC that is owned and controlled by an insured depository institution, as defined in 12 U.S.C. 1813 and regulated by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation.

(l) *Federally related transaction regulations* means regulations established by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, or the National Credit Union Administration, pursuant to sections 1112, 1113, and 1114 of FIRREA Title XI, 12 U.S.C. 3341–3343.

(m) *Person* means a natural person or an organization, including a corporation, partnership, proprietorship, association, cooperative, estate, trust, or government unit.

(n) *Secondary mortgage market participant* means a guarantor or insurer of mortgage-backed securities, or an underwriter or issuer of mortgage-backed securities. Secondary mortgage market participant only includes an individual investor in a mortgage-backed security if that investor also serves in the capacity of a guarantor, insurer, underwriter, or issuer for the mortgage-backed security.

(o) *States* mean the 50 States and the District of Columbia and the territories of Guam, Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

(p) *Uniform Standards of Professional Appraisal Practice* (USPAP) means the appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation.

§ 225.192 Appraiser panel—annual size calculation.

For purposes of determining whether, within a 12-month period, an AMC oversees an appraiser panel of more than 15 State-certified or State-licensed appraisers in a State or 25 or more State-certified or State-licensed appraisers in two or more States pursuant to § 225.191(d)(1)(iii)–

(a) An appraiser is deemed part of the AMC's appraiser panel as of the earliest date on which the AMC:

(1) Accepts the appraiser for the AMC's consideration for future appraisal assignments in covered transactions or for secondary mortgage market participants in connection with covered transactions; or

(2) Engages the appraiser to perform one or more appraisals on behalf of a creditor for a covered transaction or secondary mortgage market participant in connection with a covered transaction.

(b) An appraiser who is deemed part of the AMC's appraiser panel pursuant to paragraph (a) of this section is deemed to remain on the panel until the date on which the AMC:

(1) Sends written notice to the appraiser removing the appraiser from the appraiser panel, with an explanation of its action; or

(2) Receives written notice from the appraiser asking to be removed from the appraiser panel or notice of the death or incapacity of the appraiser.

(c) If an appraiser is removed from an AMC's appraiser panel pursuant to paragraph (b) of this section, but the AMC subsequently accepts the appraiser for consideration for future assignments or engages the appraiser at any time during the twelve months after the AMC's removal, the removal will be deemed not to have occurred, and the appraiser will be deemed to have been part of the AMC's appraiser panel without interruption.

(d) The period for purposes of counting appraisers on an AMC's appraiser panel may be the calendar year or a 12-month period established by law or rule of each State with which the AMC is required to register.

§ 225.193 Appraisal management company registration.

Each State electing to register AMCs pursuant to paragraph (b)(1) of this section must:

(a) Establish and maintain within the State appraiser certifying and licensing agency a licensing program that is subject to the limitations set forth in § 225.194 and with the legal authority and mechanisms to:

(1) Review and approve or deny an AMC's application for initial registration;

(2) Review and renew or review and deny an AMC's registration periodically;

(3) Examine the books and records of an AMC operating in the State and require the AMC to submit reports, information, and documents;

(4) Verify that the appraisers on the AMC's appraiser panel hold valid State certifications or licenses, as applicable;

(5) Conduct investigations of AMCs to assess potential violations of applicable appraisal-related laws, regulations, or orders;

(6) Discipline, suspend, terminate, or deny renewal of the registration of an AMC that violates applicable appraisal-related laws, regulations, or orders; and

(7) Report an AMC's violation of applicable appraisal-related laws, regulations, or orders, as well as disciplinary and enforcement actions and other relevant information about an AMC's operations, to the Appraisal Subcommittee.

(b) Impose requirements on AMCs that are not owned and controlled by an insured depository institution and not regulated by a Federal financial institutions regulatory agency to:

(1) Register with and be subject to supervision by the State appraiser certifying and licensing agency;

(2) Engage only State-certified or State-licensed appraisers for Federally related transactions in conformity with any Federally related transaction regulations;

(3) Establish and comply with processes and controls reasonably designed to ensure that the AMC, in engaging an appraiser, selects an appraiser who is independent of the transaction and who has the requisite education, expertise, and experience necessary to competently complete the appraisal assignment for the particular market and property type;

(4) Direct the appraiser to perform the assignment in accordance with USPAP; and

(5) Establish and comply with processes and controls reasonably designed to ensure that the AMC conducts its appraisal management services in accordance with the requirements of section 129E(a)–(i) of the Truth in Lending Act, 15 U.S.C. 1639e(a)–(i), and regulations thereunder.

§ 225.194 Ownership limitations for State-registered appraisal management companies.

(a) *Appraiser certification or licensing of owners.* (1) An AMC subject to State registration pursuant to § 225.193 shall not be registered by a State or included on the AMC National Registry if such AMC, in whole or in part, directly or indirectly, is owned by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State for a substantive cause, as determined by the appropriate State appraiser certifying and licensing agency.

AGENDA ITEM 6

(2) An AMC subject to State registration pursuant to § 225.193 is not barred by paragraph (a)(1) of this section from being registered by a State or included on the AMC National Registry if the license or certificate of the appraiser with an ownership interest was not revoked for a substantive cause and has been reinstated by the State or States in which the appraiser was licensed or certified.

(b) *Good moral character of owners.* An AMC shall not be registered by a State if any person that owns more than 10 percent of the AMC—

(1) Is determined by the State appraiser certifying and licensing agency not to have good moral character; or

(2) Fails to submit to a background investigation carried out by the State appraiser certifying and licensing agency.

§ 225.195 Requirements for Federally regulated appraisal management companies.

(a) *Requirements in providing services.* To provide appraisal management services for a creditor or secondary mortgage market participant relating to a covered transaction, a Federally regulated AMC must comply with the requirements in § 225.193(b)(2) through (5).

(b) *Ownership limitations.* (1) A Federally regulated AMC shall not be included on the AMC National Registry if such AMC, in whole or in part, directly or indirectly, is owned by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State for a substantive cause, as determined by the ASC.

(2) A Federally regulated AMC is not barred by this paragraph (b) from being included on the AMC National Registry if the license or certificate of the appraiser with an ownership interest was not revoked for a substantive cause and has been reinstated by the State or States in which the appraiser was licensed or certified.

(c) *Reporting information for the AMC National Registry.* A Federally regulated AMC must report to the State or States in which it operates the information required to be submitted by the State to the Appraisal Subcommittee pursuant to the Appraisal Subcommittee's policies regarding the determination of the AMC National Registry fee, including but not necessarily limited to the collection of information related to the limitations set forth in this section.

§ 225.196 Information to be presented to the Appraisal Subcommittee by participating States.

Each State electing to register AMCs for purposes of permitting AMCs to provide appraisal management services relating to covered transactions in the State must submit to the Appraisal Subcommittee the information required to be submitted by Appraisal Subcommittee regulations or guidance concerning AMCs that operate in the State.

Federal Deposit Insurance Corporation

Authority and Issuance

For the reasons set forth in the preamble, the FDIC amends 12 CFR parts 323 and 390 as follows:

PART 323—APPRAISALS

■ 8. Revise the authority citation for part 323 to read as follows:

Authority: 12 U.S.C. 1818, 1819 [''Seventh'' and ''Tenth''] and 3331 *et seq.*

■ 9. Add a heading for new subpart A to read as follows:

Subpart A—Appraisals Generally

§§ 323.1 through 323.7—[Designated as subpart A]

■ 10. Designate §§ 323.1 through 323.7 as new subpart A.

§§ 323.1, 323.3, 323.4, and 323.5—[Amended]

■ 11. Amend §§ 323.1, 323.3, 323.4, and 323.5 by removing ''part'' and adding ''subpart'' in its place in each instance in which it appears.

■ 12. Add subpart B to part 323 to read as follows:

Subpart B—Appraisal Management Company Minimum Requirements

Sec.

323.8 Authority, purpose, and scope.
323.9 Definitions.
323.10 Appraiser panel—annual size calculation.
323.11 Appraisal management company registration.
323.12 Ownership limitations for State-registered appraisal management companies.
323.13 Requirements for Federally regulated appraisal management companies.
323.14 Information to be presented to the Appraisal Subcommittee by participating States.

§ 323.8 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued pursuant to12 U.S.C. 1818, 1819 [''Seventh'' and ''Tenth''] and Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA), as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) (Pub. L. 111–203, 124 Stat. 1376 (2010)), 12 U.S.C. 3331 *et seq.*

(b) *Purpose.* The purpose of this subpart is to implement sections 1109, 1117, 1121, and 1124 of FIRREA Title XI, 12 U.S.C. 3338, 3346, 3350, and 3353.

(c) *Scope.* This subpart applies to States and to appraisal management companies (AMCs) providing appraisal management services in connection with consumer credit transactions secured by a consumer's principal dwelling or securitizations of those transactions.

(d) *Rule of construction.* Nothing in this subpart should be construed to prevent a State from establishing requirements in addition to those in this subpart. In addition, nothing in this subpart should be construed to alter guidance in, and applicability of, the Interagency Appraisal and Evaluation Guidelines [1] or other relevant agency guidance that cautions banks, bank holding companies, Federal savings associations, state savings association, and credit unions, as applicable, that each such entity is accountable for overseeing the activities of third-party service providers and ensuring that any services provided by a third party comply with applicable laws, regulations, and supervisory guidance applicable directly to the financial institution.

§ 323.9 Definitions.

For purposes of this subpart:

(a) *Affiliate* has the meaning provided in 12 U.S.C. 1841.

(b) *AMC National Registry* means the registry of State-registered AMCs and Federally regulated AMCs maintained by the Appraisal Subcommittee.

(c)(1) *Appraisal management company* (AMC) means a person that:

(i) Provides appraisal management services to creditors or to secondary mortgage market participants, including affiliates;

(ii) Provides such services in connection with valuing a consumer's principal dwelling as security for a consumer credit transaction or incorporating such transactions into securitizations; and

(iii) Within a given 12-month period, as defined in § 323.10(d), oversees an appraiser panel of more than 15 State-certified or State-licensed appraisers in a State or 25 or more State-certified or State-licensed appraisers in two or more States, as described in § 323.12;

[1] *https://www.fdic.gov/regulations/laws/rules/5000–4800.html.*

(2) An AMC does not include a department or division of an entity that provides appraisal management services only to that entity.

(d) *Appraisal management services* means one or more of the following:

(1) Recruiting, selecting, and retaining appraisers;

(2) Contracting with State-certified or State-licensed appraisers to perform appraisal assignments;

(3) Managing the process of having an appraisal performed, including providing administrative services such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and secondary market participants, collecting fees from creditors and secondary market participants for services provided, and paying appraisers for services performed; and

(4) Reviewing and verifying the work of appraisers.

(e) *Appraiser panel* means a network, list or roster of licensed or certified appraisers approved by an AMC to perform appraisals as independent contractors for the AMC. Appraisers on an AMC's ''appraiser panel'' under this part include both appraisers accepted by the AMC for consideration for future appraisal assignments in covered transactions or for secondary mortgage market participants in connection with covered transactions and appraisers engaged by the AMC to perform one or more appraisals in covered transactions or for secondary mortgage market participants in connection with covered transactions. An appraiser is an independent contractor for purposes of this subpart if the appraiser is treated as an independent contractor by the AMC for purposes of Federal income taxation.

(f) *Appraisal Subcommittee* means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(g) *Consumer credit* means credit offered or extended to a consumer primarily for personal, family, or household purposes.

(h) *Covered transaction* means any consumer credit transaction secured by the consumer's principal dwelling.

(i) *Creditor* means:

(1) A person who regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments (not including a down payment), and to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract.

(2) A person regularly extends consumer credit if the person extended credit (other than credit subject to the requirements of 12 CFR 1026.32) more than 5 times for transactions secured by a dwelling in the preceding calendar year. If a person did not meet these numerical standards in the preceding calendar year, the numerical standards shall be applied to the current calendar year. A person regularly extends consumer credit if, in any 12-month period, the person originates more than one credit extension that is subject to the requirements of 12 CFR 1026.32 or one or more such credit extensions through a mortgage broker.

(j) *Dwelling* means:

(1) A residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence.

(2) A consumer can have only one ''principal'' dwelling at a time. Thus, a vacation or other second home would not be a principal dwelling. However, if a consumer buys or builds a new dwelling that will become the consumer's principal dwelling within a year or upon the completion of construction, the new dwelling is considered the principal dwelling for purposes of this section.

(k) *Federally regulated AMC* means an AMC that is owned and controlled by an insured depository institution, as defined in 12 U.S.C. 1813 and regulated by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation.

(l) *Federally related transaction regulations* means regulations established by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, or the National Credit Union Administration, pursuant to sections 1112, 1113, and 1114 of FIRREA Title XI, 12 U.S.C. 3341–3343.

(m) *Person* means a natural person or an organization, including a corporation, partnership, proprietorship, association, cooperative, estate, trust, or government unit.

(n) *Secondary mortgage market participant* means a guarantor or insurer of mortgage-backed securities, or an underwriter or issuer of mortgage-backed securities. Secondary mortgage market participant only includes an individual investor in a mortgage-backed security if that investor also serves in the capacity of a guarantor, insurer, underwriter, or issuer for the mortgage-backed security.

(o) *States* mean the 50 States and the District of Columbia and the territories of Guam, Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

(p) *Uniform Standards of Professional Appraisal Practice* (USPAP) means the appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation.

§ 323.10 Appraiser panel—annual size calculation.

For purposes of determining whether, within a 12-month period, an AMC oversees an appraiser panel of more than 15 State-certified or State-licensed appraisers in a State or 25 or more State-certified or State-licensed appraisers in two or more States pursuant to § 323.9(c)(1)(iii)—

(a) An appraiser is deemed part of the AMC's appraiser panel as of the earliest date on which the AMC:

(1) Accepts the appraiser for the AMC's consideration for future appraisal assignments in covered transactions or for secondary mortgage market participants in connection with covered transactions; or

(2) Engages the appraiser to perform one or more appraisals on behalf of a creditor for a covered transaction or secondary mortgage market participant in connection with a covered transaction.

(b) An appraiser who is deemed part of the AMC's appraiser panel pursuant to paragraph (a) of this section is deemed to remain on the panel until the date on which the AMC:

(1) Sends written notice to the appraiser removing the appraiser from the appraiser panel, with an explanation of its action; or

(2) Receives written notice from the appraiser asking to be removed from the appraiser panel or notice of the death or incapacity of the appraiser.

(c) If an appraiser is removed from an AMC's appraiser panel pursuant to paragraph (b) of this section, but the AMC subsequently accepts the appraiser for consideration for future assignments or engages the appraiser at any time during the twelve months after the AMC's removal, the removal will be deemed not to have occurred, and the appraiser will be deemed to have been part of the AMC's appraiser panel without interruption.

(d) The period for purposes of counting appraisers on an AMC's appraiser panel may be the calendar year or a 12-month period established by law or rule of each State with which the AMC is required to register.

§ 323.11 Appraisal management company registration.

Each State electing to register AMCs pursuant to paragraph (b)(1) of this section must:

(a) Establish and maintain within the State appraiser certifying and licensing agency a licensing program that is subject to the limitations set forth in § 323.12 and with the legal authority and mechanisms to:

(1) Review and approve or deny an AMC's application for initial registration;

(2) Review and renew or review and deny an AMC's registration periodically;

(3) Examine the books and records of an AMC operating in the State and require the AMC to submit reports, information, and documents;

(4) Verify that the appraisers on the AMC's appraiser panel hold valid State certifications or licenses, as applicable;

(5) Conduct investigations of AMCs to assess potential violations of applicable appraisal-related laws, regulations, or orders;

(6) Discipline, suspend, terminate, or deny renewal of the registration of an AMC that violates applicable appraisal-related laws, regulations, or orders; and

(7) Report an AMC's violation of applicable appraisal-related laws, regulations, or orders, as well as disciplinary and enforcement actions and other relevant information about an AMC's operations, to the Appraisal Subcommittee.

(b) Impose requirements on AMCs that are not owned and controlled by an insured depository institution and not regulated by a Federal financial institution regulatory agency to:

(1) Register with and be subject to supervision by the State appraiser certifying and licensing agency;

(2) Engage only State-certified or State-licensed appraisers for Federally regulated transactions in conformity with any Federally related transaction regulations;

(3) Establish and comply with processes and controls reasonably designed to ensure that the AMC, in engaging an appraiser, selects an appraiser who is independent of the transaction and who has the requisite education, expertise, and experience necessary to competently complete the appraisal assignment for the particular market and property type;

(4) Direct the appraiser to perform the assignment in accordance with USPAP; and

(5) Establish and comply with processes and controls reasonably designed to ensure that the AMC conducts its appraisal management services in accordance with the requirements of section 129E(a)–(i) of the Truth in Lending Act, 15 U.S.C. 1639e(a)–(i), and regulations thereunder.

§ 323.12 Ownership limitations for State-registered appraisal management companies.

(a) *Appraiser certification or licensing of owners.* (1) An AMC subject to State registration pursuant to this section shall not be registered by a State or included on the AMC National Registry if such AMC, in whole or in part, directly or indirectly, is owned by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State for a substantive cause, as determined by the appropriate State appraiser certifying and licensing agency.

(2) An AMC subject to State registration pursuant to this section is not barred by § 323.11(a)(1) from being registered by a State or included on the AMC National Registry if the license or certificate of the appraiser with an ownership interest was not revoked for a substantive cause and has been reinstated by the State or States in which the appraiser was licensed or certified.

(b) *Good moral character of owners.* An AMC shall not be registered by a State if any person that owns more than 10 percent of the AMC—

(1) Is determined by the State appraiser certifying and licensing agency not to have good moral character; or

(2) Fails to submit to a background investigation carried out by the State appraiser certifying and licensing agency.

§ 323.13 Requirements for Federally regulated appraisal management companies.

(a) *Requirements in providing services.* To provide appraisal management services for a creditor or secondary mortgage market participant relating to a covered transaction, a Federally regulated AMC must comply with the requirements in § 323.11(b)(2) through (5).

(b) *Ownership limitations.* (1) A Federally regulated AMC shall not be included on the AMC National Registry if such AMC, in whole or in part, directly or indirectly, is owned by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State for a substantive cause, as determined by the ASC.

(2) A Federally regulated AMC is not barred by § 323.12(b) from being included on the AMC National Registry if the license or certificate of the appraiser with an ownership interest was not revoked for a substantive cause and has been reinstated by the State or States in which the appraiser was licensed or certified.

(c) *Reporting information for the AMC National Registry.* A Federally regulated AMC must report to the State or States in which it operates the information required to be submitted by the State pursuant to the Appraisal Subcommittee's policies regarding the determination of the AMC National Registry fee, including but not necessarily limited to the collection of information related to the limitations set forth in § 323.12, as applicable.

§ 323.14 Information to be presented to the Appraisal Subcommittee by participating States.

Each State electing to register AMCs for purposes of permitting AMCs to provide appraisal management services relating to covered transactions in the State must submit to the Appraisal Subcommittee the information required to be submitted by Appraisal Subcommittee regulations or guidance concerning AMCs that operate in the State.

PART 390—REGULATIONS TRANSFERRED FROM THE OFFICE OF THRIFT SUPERVISION

■ 13. The authority citation for part 390 is revised to read as follows:

Authority: 12 U.S.C. 1819.

Subpart A also issued under 12 U.S.C. 1820.

Subpart B also issued under 12 U.S.C. 1818.

Subpart C also issued under 5 U.S.C. 504; 554–557; 12 U.S.C. 1464; 1467; 1468; 1817; 1818; 1820; 1829; 3349, 4717; 15 U.S.C. 78*l;* 78o–5; 78u–2; 28 U.S.C. 2461 note; 31 U.S.C. 5321; 42 U.S.C. 4012a.

Subpart D also issued under 12 U.S.C. 1817; 1818; 1820; 15 U.S.C. 78*l.*

Subpart E also issued under 12 U.S.C. 1813; 1831m; 15 U.S.C. 78.

Subpart F also issued under 5 U.S.C. 552; 559; 12 U.S.C. 2901 *et seq.*

Subpart G also issued under 12 U.S.C. 2810 *et seq.,* 2901 *et seq.;* 15 U.S.C. 1691; 42 U.S.C. 1981, 1982, 3601–3619.

Subpart I also issued under 12 U.S.C. 1831x.

Subpart J also issued under 12 U.S.C. 1831p–1.

Subpart K also issued under 12 U.S.C. 1817; 1818; 15 U.S.C. 78c; 78l.

Subpart L also issued under 12 U.S.C. 1831p–1.

Subpart M also issued under 12 U.S.C. 1818.

Subpart N also issued under 12 U.S.C. 1821.

Subpart O also issued under 12 U.S.C. 1828.

Subpart P also issued under 12 U.S.C. 1470; 1831e; 1831n; 1831p–1; 3339.

Subpart Q also issued under 12 U.S.C. 1462; 1462a; 1463; 1464.

Subpart R also issued under 12 U.S.C. 1463; 1464; 1831m; 1831n; 1831p–1.

Subpart S also issued under 12 U.S.C. 1462; 1462a; 1463; 1464; 1468a; 1817; 1820; 1828; 1831e; 1831o; 1831p–1; 1881–1884; 3207; 3339; 15 U.S.C. 78b; 78*l;* 78m; 78n; 78p; 78q; 78w; 31 U.S.C. 5318; 42 U.S.C. 4106.

Subpart T also issued under 12 U.S.C. 1462a; 1463; 1464; 15 U.S.C. 78c; 78*l;* 78m; 78n; 78w.

Subpart U also issued under 12 U.S.C. 1462a; 1463; 1464; 15 U.S.C. 78c; 78*l;* 78m; 78n; 78p; 78w; 78d–1; 7241; 7242; 7243; 7244; 7261; 7264; 7265.

Subpart V also issued under 12 U.S.C. 3201–3208.

Subpart W also issued under 12 U.S.C. 1462a; 1463; 1464; 15 U.S.C. 78c; 78*l;* 78m; 78n; 78p; 78w.

Subpart Y also issued under 12 U.S.C.1831o.

Subpart Z also issued under 12 U.S.C. 1462; 1462a; 1463; 1464; 1828 (note).

Subpart X—[Removed and Reserved]

■ 14. Remove and reserve subpart X consisting of §§ 390.440 through 390.447.

Bureau of Consumer Financial Protection

Authority and Issuance

For the reasons stated above, the Bureau amends Regulation Z, 12 CFR part 1026, as follows:

PART 1026—TRUTH IN LENDING (REGULATION Z)

■ 15. The authority citation for part 1026 is revised to read as follows:

Authority: 12 U.S.C. 2601, 2603–2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

Subpart A—General

■ 16. Section 1026.1 is amended by revising paragraph (a) to read as follows:

§ 1026.1 Authority, purpose, coverage, organization, enforcement, and liability.

(a) *Authority.* This part, known as Regulation Z, is issued by the Bureau of Consumer Financial Protection to implement the Federal Truth in Lending Act, which is contained in title I of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 *et seq.*). This part also implements title XII, section 1204 of the Competitive Equality Banking Act of 1987 (Pub. L. 100–86, 101 Stat. 552). Furthermore, this part implements certain provisions of the Real Estate Settlement Procedures Act of 1974, as amended (12 U.S.C. 2601 *et seq.*). In addition, this part implements certain provisions of the Financial Institutions Reform, Recovery, and Enforcement Act, as amended (12 U.S.C. 3331 *et seq.*). The Bureau's information-collection requirements contained in this part have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. 3501 *et seq.* and have been assigned OMB No. 3170–0015 (Truth in Lending).

* * * * *

Subpart E—Special Rules for Certain Home Mortgage Transactions

■ 17. Section 1026.42 is amended by adding paragraph (h) to read as follows:

§ 1026.42 Valuation independence.

* * * * *

(h) The Bureau issued a joint rule to implement the appraisal management company minimum requirements in the Financial Institutions Reform, Recovery, and Enforcement Act, as amended by section 1473 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. *See* 12 CFR part 34.

Federal Housing Finance Agency

Authority and Issuance

For the reasons set forth in the **SUPPLEMENTARY INFORMATION**, FHFA amends 12 CFR part 1222, as follows:

PART 1222—APPRAISALS

■ 18. The authority citation for part 1222 is revised to read as follows:

Authority: 12 U.S.C. 4501 *et seq.,* 12 U.S.C. 4526 and 15 U.S.C. 1639h.

■ 19. Add subpart B to part 1222 to read as follows:

Subpart B—Appraisal Management Company Minimum Requirements

Sec.

1222.20 Authority, purpose, and scope.
1222.21 Definitions.
1222.22 Appraiser panel—annual size calculation.
1222.23 Appraisal management company registration.
1222.24 Ownership limitations for State-registered appraisal management companies.
1222.25 Requirements for Federally regulated appraisal management companies.
1222.26 Information to be presented to the Appraisal Subcommittee by participating States.

§ 1222.20 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued by the Federal Housing Finance Agency pursuant to 12 U.S.C. 4501 *et seq.,* 12 U.S.C. 4526, and Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA), as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) (Pub. L. 111–203, 124 Stat. 1376 (2010)), 12 U.S.C. 3331 *et seq.*

(b) *Purpose.* The purpose of this subpart is to implement sections 1109, 1117, 1121, and 1124 of FIRREA Title XI, 12 U.S.C. 3338, 3346, 3350, and 3353.

(c) *Scope.* This subpart applies to States and to appraisal management companies (AMCs) providing appraisal management services in connection with consumer credit transactions secured by a consumer's principal dwelling or securitizations of those transactions.

(d) *Rule of construction.* Nothing in this subpart should be construed to prevent a State from establishing requirements in addition to those in this subpart. In addition, nothing in this subpart should be construed to alter guidance in, and applicability of, the Interagency Appraisal and Evaluation Guidelines [1] or other relevant agency guidance that cautions banks, bank holding companies, Federal savings associations, state savings associations, and credit unions, as applicable, that each such entity is accountable for overseeing the activities of third-party service providers and ensuring that any services provided by a third party comply with applicable laws, regulations, and supervisory guidance applicable directly to the financial institution.

§ 1222.21 Definitions.

For purposes of this subpart:

(a) *Affiliate* has the meaning provided in 12 U.S.C. 1841.

(b) *AMC National Registry* means the registry of State-registered AMCs and Federally regulated AMCs maintained by the Appraisal Subcommittee.

(c)(1) *Appraisal management company* (AMC) means a person that:

(i) Provides appraisal management services to creditors or to secondary mortgage market participants, including affiliates;

(ii) Provides such services in connection with valuing a consumer's principal dwelling as security for a consumer credit transaction or incorporating such transactions into securitizations; and

(iii) Within a given 12-month period, as defined in § 1222.22(d), oversees an appraiser panel of more than 15 State-certified or State-licensed appraisers in a State or 25 or more State-certified or State-licensed appraisers in two or more States, as described in § 1222.22;

(2) An AMC does not include a department or division of an entity that

[1] 75 FR 77450 (December 10, 2010).

provides appraisal management services only to that entity.

(d) *Appraisal management services* means one or more of the following:

(1) Recruiting, selecting, and retaining appraisers;

(2) Contracting with State-certified or State-licensed appraisers to perform appraisal assignments;

(3) Managing the process of having an appraisal performed, including providing administrative services such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and secondary market participants, collecting fees from creditors and secondary market participants for services provided, and paying appraisers for services performed; and

(4) Reviewing and verifying the work of appraisers.

(e) *Appraiser panel* means a network, list or roster of licensed or certified appraisers approved by an AMC to perform appraisals as independent contractors for the AMC. Appraisers on an AMC's ''appraiser panel'' under this part include both appraisers accepted by the AMC for consideration for future appraisal assignments in covered transactions or for secondary mortgage market participants in connection with covered transactions and appraisers engaged by the AMC to perform one or more appraisals in covered transactions or for secondary mortgage market participants in connection with covered transactions. An appraiser is an independent contractor for purposes of this subpart if the appraiser is treated as an independent contractor by the AMC for purposes of Federal income taxation.

(f) *Appraisal Subcommittee* means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(g) *Consumer credit* means credit offered or extended to a consumer primarily for personal, family, or household purposes.

(h) *Covered transaction* means any consumer credit transaction secured by the consumer's principal dwelling.

(i) *Creditor* means:

(1) A person who regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments (not including a down payment), and to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract.

(2) A person regularly extends consumer credit if the person extended credit (other than credit subject to the requirements of 12 CFR 1026.32) more than 5 times for transactions secured by a dwelling in the preceding calendar year. If a person did not meet these numerical standards in the preceding calendar year, the numerical standards shall be applied to the current calendar year. A person regularly extends consumer credit if, in any 12-month period, the person originates more than one credit extension that is subject to the requirements of 12 CFR 1026.32 or one or more such credit extensions through a mortgage broker.

(j) *Dwelling* means:

(1) A residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence.

(2) A consumer can have only one ''principal'' dwelling at a time. Thus, a vacation or other second home would not be a principal dwelling. However, if a consumer buys or builds a new dwelling that will become the consumer's principal dwelling within a year or upon the completion of construction, the new dwelling is considered the principal dwelling for purposes of this section.

(k) *Federally regulated AMC* means an AMC that is owned and controlled by an insured depository institution, as defined in 12 U.S.C. 1813 and that is regulated by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation.

(l) *Federally related transaction regulations* means regulations established by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, or the National Credit Union Administration, pursuant to sections 1112, 1113, and 1114 of FIRREA Title XI, 12 U.S.C. 3341–3343.

(m) *Person* means a natural person or an organization, including a corporation, partnership, proprietorship, association, cooperative, estate, trust, or government unit.

(n) *Secondary mortgage market participant* means a guarantor or insurer of mortgage-backed securities, or an underwriter or issuer of mortgage-backed securities. Secondary mortgage market participant only includes an individual investor in a mortgage-backed security if that investor also serves in the capacity of a guarantor, insurer, underwriter, or issuer for the mortgage-backed security.

(o) *States* mean the 50 States and the District of Columbia and the territories of Guam, Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

(p) *Uniform Standards of Professional Appraisal Practice* (USPAP) means the appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation.

§ 1222.22 Appraiser panel—annual size calculation.

For purposes of determining whether, within a 12-month period, an AMC oversees an appraiser panel of more than 15 State-certified or State-licensed appraisers in a State or 25 or more State-certified or State-licensed appraisers in two or more States pursuant to § 1222.21(c)(1)(iii)—

(a) An appraiser is deemed part of the AMC's appraiser panel as of the earliest date on which the AMC:

(1) Accepts the appraiser for the AMC's consideration for future appraisal assignments in covered transactions or for secondary mortgage market participants in connection with covered transactions; or

(2) Engages the appraiser to perform one or more appraisals on behalf of a creditor for a covered transaction or secondary mortgage market participant in connection with covered transactions.

(b) An appraiser who is deemed part of the AMC's appraiser panel pursuant to paragraph (a) of this section is deemed to remain on the panel until the date on which the AMC:

(1) Sends written notice to the appraiser removing the appraiser from the appraiser panel, with an explanation of its action; or

(2) Receives written notice from the appraiser asking to be removed from the appraiser panel or notice of the death or incapacity of the appraiser.

(c) If an appraiser is removed from an AMC's appraiser panel pursuant to paragraph (b) of this section, but the AMC subsequently accepts the appraiser for consideration for future assignments or engages the appraiser at any time during the twelve months after the AMC's removal, the removal will be deemed not to have occurred, and the appraiser will be deemed to have been part of the AMC's appraiser panel without interruption.

(d) The period for purposes of counting appraisers on an AMC's appraiser panel may be the calendar year or a 12-month period established by law or rule of each State with which the AMC is required to register.

§ 1222.23 Appraisal management company registration.

Each State electing to register AMCs pursuant to paragraph (b)(1) of this section must:

(a) Establish and maintain within the State appraiser certifying and licensing agency a licensing program that is subject to the limitations set forth in § 1222.24 and with the legal authority and mechanisms to:

(1) Review and approve or deny an AMC's application for initial registration;

(2) Review and renew or review and deny an AMC's registration periodically;

(3) Examine the books and records of an AMC operating in the State and require the AMC to submit reports, information, and documents;

(4) Verify that the appraisers on the AMC's panel hold valid State certifications or licenses, as applicable;

(5) Conduct investigations of AMCs to assess potential violations of applicable appraisal-related laws, regulations, or orders;

(6) Discipline, suspend, terminate, or deny renewal of the registration of an AMC that violates applicable appraisal-related laws, regulations, or orders; and

(7) Report an AMC's violation of applicable appraisal-related laws, regulations, or orders, as well as disciplinary and enforcement actions and other relevant information about an AMC's operations, to the Appraisal Subcommittee.

(b) Impose requirements on AMCs that are not owned and controlled by an insured depository institution and not regulated by a Federal financial institutions regulatory agency to:

(1) Register with and be subject to supervision by the State appraiser certifying and licensing agency;

(2) Engage only State-certified or State-licensed appraisers for Federally related transactions in conformity with any Federally related transaction regulations;

(3) Establish and comply with processes and controls reasonably designed to ensure that the AMC, in engaging an appraiser, selects an appraiser who is independent of the transaction and who has the requisite education, expertise, and experience necessary to competently complete the appraisal assignment for the particular market and property type;

(4) Direct the appraiser to perform the assignment in accordance with USPAP; and

(5) Establish and comply with processes and controls reasonably designed to ensure that the AMC conducts its appraisal management services in accordance with the requirements of section 129E(a)–(i) of the Truth in Lending Act, 15 U.S.C. 1639e(a)–(i), and regulations thereunder.

§ 1222.24 Ownership limitations for State-registered appraisal management companies.

(a) *Appraiser certification or licensing of owners.* (1) An AMC subject to State registration pursuant to § 1222.23 shall not be registered by a State or included on the AMC National Registry if such AMC, in whole or in part, directly or indirectly, is owned by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State for a substantive cause, as determined by the appropriate State appraiser certifying and licensing agency.

(2) An AMC subject to State registration pursuant to § 1222.23 is not barred by paragraph (a)(1) of this section from being registered by a State or included on the AMC National Registry if the license or certificate of the appraiser with an ownership interest was not revoked for a substantive cause and has been reinstated by the State or States in which the appraiser was licensed or certified.

(b) *Good moral character of owners.* An AMC shall not be registered by a State if any person that owns more than 10 percent of the AMC—

(1) Is determined by the State appraiser certifying and licensing agency not to have good moral character; or

(2) Fails to submit to a background investigation carried out by the State appraiser certifying and licensing agency.

§ 1222.25 Requirements for Federally regulated appraisal management companies.

(a) *Requirements in providing services.* To provide appraisal management services for a creditor or secondary mortgage market participant relating to a covered transaction, a Federally regulated AMC must comply with the requirements in § 1222.23(b)(2) through (5).

(b) *Ownership limitations.* (1) A Federally regulated AMC shall not be included on the AMC National Registry if such AMC, in whole or in part, directly or indirectly, is owned by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State for a substantive cause, as determined by the ASC.

(2) A Federally regulated AMC is not barred pursuant to paragraph (b)(1) of this section from being included on the AMC National Registry if the license or certificate of the appraiser with an ownership interest was not revoked for substantive cause and has been reinstated by the State or States in which the appraiser was licensed or certified.

(c) *Reporting information for the AMC National Registry.* A Federally regulated AMC must report to the State or States in which it operates the information required to be submitted by the State to the Appraisal Subcommittee pursuant to the Appraisal Subcommittee's policies regarding the determination of the AMC National Registry fee, including but not necessarily limited to the collection of information related to the limitations set forth in this section, as applicable.

§ 1222.26 Information to be presented to the Appraisal Subcommittee by participating States.

Each State electing to register AMCs for purposes of permitting AMCs to provide appraisal management services relating to covered transactions in the State must submit to the Appraisal Subcommittee the information required to be submitted by Appraisal Subcommittee regulations or guidance concerning AMCs that operate in the State.

Dated: April 21, 2015.

Thomas J. Curry,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, April 29, 2015

Robert deV. Frierson,

Secretary of the Board.

Dated: April 21, 2015.

Robert E. Feldman,

Executive Secretary.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Dated: April 14, 2015.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

Dated: March 23, 2015.

Melvin L. Watt,

Director, Federal Housing Finance Agency.

In concurrence:

Dated: April 22, 2015.

Gerard Poliquin,

Secretary of the Board, NCUA.

[FR Doc. 2015–12719 Filed 6–8–15; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 7535–01–P; 4810–AM–P; 8070–01–P

THE APPRAISAL FOUNDATION
Authorized by Congress as the Source of Appraisal Standards and Appraiser Qualifications

October 5, 2016

Jamie S. Wickliffe, Chair
Texas Appraiser Licensing and Certification Board
Stephen F. Austin Building
1700 N. Congress Ave., Suite 400
Austin, TX 78701
Email: jamie.wickliffe@talcb.texas.gov

Dear Chair Wickliffe:

It was reported by the Foundation Appraisers Coalition of Texas (FACT) in its September 2016 Legislative Update that at the behest of the Appraisal Institute (AI), the Texas Appraiser Licensing and Certification Board (TALCB) may soon explore changes to its administrative rules to allow for alternative valuation standards. It was further reported that the TALCB "has expressed interest in 'negotiated' rulemaking" in this regard.

FACT voted against the AI's request to support its initiative to change the rules. Despite the opposition and defeat, AI has indicated that it remains intent on achieving such rule change in Texas.

The Appraisal Foundation (TAF), a neutral third party authorized by Congress to establish appraisal standards and appraiser qualifications, has significant concerns regarding attempts to allow the use of appraisal standards that are below the minimum set for professional appraisal practice. **Recognition of appraisal standards other than the Uniform Standards of Professional Appraisal Practice (USPAP) would seriously erode public trust in valuation and such initiatives do not have the support of the appraisal profession.** The reasons for the lack of support and why to date, not one state has adopted an alternative or additional standard to be used in lieu of USPAP, include:

Federally Related Transactions: Federal law mandates that appraisals performed in conjunction with federally related transactions comply with USPAP. However, **the vast majority (over 75%) of residential mortgage transactions fall outside the current definition of what constitutes a federally related transaction.** Therefore, if regulation permitting alternative standards was enacted, most of the loans made by federally insured banks and credit unions may not be afforded the protection of valuations in conformance with the nation's generally recognized valuation standards, USPAP. Put simply, the impact of a rule change that permits the use of alternative or additional appraisal standards in lieu of USPAP could be quite significant.

Regulatory Burden: Users of appraisal services will need to bolster, at considerable expense, their compliance operations in order to: (a) initially become knowledgeable about the numerous sets of valuation standards that would be permitted to be used; and (b) continually monitor revisions to those standards. Please see Attachment #1 for a partial list of valuation standards that could be brought forth for TALCB's consideration under such rule change initiative.

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Administrative and Financial Burden: Attempting to enforce numerous sets of valuation standards would create a significant administrative burden for TALCB. There would be substantial costs associated with training legal and investigative staff about the numerous sets of valuation standards. When a similar initiative was being considered by the State of California last year, it was tabled because the California Bureau of Real Estate Appraisers (BREA) estimated an expense to the State of $260,000 in the first year alone. Many appraisers and others familiar with the profession have stated that they feel the cost estimate was too conservative. Additionally, the concerns expressed by the Appraisal Subcommittee in its letter of June 4, 2015 (Attachment #2) are valid and should be considered in Texas as well. The negative implications on the TALCB's complaint investigation program could be numerous.

Enforceability & Recognition: Of all valuation standards, only USPAP has been proven to be enforceable in federal courts, state courts, and administrative law proceedings for the past quarter century without issue and it has become deeply embedded in our legal system. USPAP consists of principles-based rules, whereas the AI's standards are essentially principles. The lack of specificity in AI's standards would create significant enforcement challenges for your legal staff.

Unlike standards offered by a trade association, USPAP is developed in a transparent manner to ensure public trust and is not written to accommodate the wishes of members. All proposed changes to USPAP are publicly exposed for comment, all comment letters are posted on our website, and public comment is received at meetings held around the country.

A Solution in Search of a Problem: **No state** has adopted alternative standards to be used in lieu of USPAP. That is because the current system is working quite well and the reasons being put forth to change it lack substance. The argument that USPAP prevents appraisers from being able to ethically perform various appraisal assignments is false. Please see Attachment #3, *Yes I Can Accept that Assignment* for a brief list of valuation assignments able to be performed under USPAP.

Minimal Support within the Appraisal Profession: One set of strong yet flexible standards provides stability, prevents confusion, and is the hallmark of a profession. It is for this reason that 16 professional organizations with a strong interest in valuation are opposed to multiple sets of valuation standards and support one national set of standards, USPAP. See Attachment #4 for a listing of these organizations. Only one appraiser membership organization that represents less than 20 percent of real property appraisers is advocating for such an initiative, and its own members have spoken against it at public meetings in California, Tennessee, Florida, and Montana.

The TALCB has additional and state-specific reasons why standards rulemaking should not be pursued at this time:

AI Standards Fail to Meet the Texas Statutory Threshold: The Texas statute permits the TALCB to adopt rules relating to appraisal standards "that are recognized as **substantially equivalent to or consistent with** the Uniform Standards of Professional Appraisal Practice" (emphasis added).

The AI's Standards of Valuation Practice (SVP) are **not substantially equivalent to or consistent with** USPAP; on the contrary, they fall woefully short of the provisions of USPAP, which help ensure and preserve the public trust. Under sworn testimony before the Florida Real Estate Appraiser Board, an AI representative admitted that the SVP is deficient in multiple areas. One primary area of inconsistency is that the SVP allows contingency fee assignments.

TAF has identified over a dozen areas where the AI's SVP are *substantially deficient* to USPAP. Attached is an analysis of the SVP (Attachment #5) that was prepared by Maggie Hambleton, former Chair of the Ohio Real Estate Appraisal Board, current Chair of the Appraisal Standards Board, and designated AI member.

Attempts to Reconcile Differences: Leadership of AI has openly expressed support for USPAP and preference for one set of uniform standards. To that end, AI is currently working with TAF's Appraisal Standards Board to explore possible edits to USPAP that would resolve what AI views as issues for its members. Success in these collaborative efforts would negate the need for TALCB to authorize the use of alternative standards and make such rulemaking initiative unnecessary.

For these many reasons and more, **we strongly urge the TALCB to preserve stability and consistency for the state's valuation profession, and forego rulemaking activities to authorize use of additional appraisal standards.** Should the TALCB decide to proceed to rulemaking in this regard, we respectfully request to receive notice of same and to be invited to participate in such activities.

Should you wish to discuss these items in greater detail or need additional information, please contact me by telephone at 202-624-3040 or email at david@appraisalfoundation.org.

Sincerely,

David S. Bunton
President

cc: James J. Jeffries, Vice Chair, TALCB; james.jeffries@talcb.texas.gov
Earl "Buster" Renfrow, Secretary, TALCB; buster.renfrow@talcb.texas.gov
Jesus "Jesse" Barba, Jr, Member, TALCB; jesse.barba@talcb.texas.gov
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Brian L. Padden, Member, TALCB; brian.padden@talcb.texas.gov
Douglas E. Oldmixon, Commissioner, TALCB; douglas.oldmixon@talcb.texas.gov

Valuation Standards

USPAP (Uniform Standards of Professional Appraisal Practice)	The "gold standard" in the United States and recognized as such worldwide, USPAP sets the minimum appraisal standards upon which others are based; developed in 1987 through the collaborative efforts of the leading US appraisal organizations and updated thereafter under the leadership of TAF and the ASB. All revisions and updates are exposed for public comment and adopted in public venues.
IVS (International Valuation Standards)	Appraisal standards recognized by countries outside the US; the IVS Council and ASB are collaboratively creating a "bridge" document so appraisers can readily understand how to complete assignments when a client requires adherence to both.
UASFLA or the Yellow Book (Uniform Appraisal Standards for Federal Land Acquisitions)	Under leadership of the US Dept. of Justice, the Yellow Book was developed in 1971 to bring uniformity in appraisal standards for the many federal agencies engaged in property acquisition. The DOJ is collaborating with TAF and the ASB on the next edition which is expected to be published in 2016.
Professional Standards for Asset Valuation or the Red Book	Asset valuation standards by the Royal Institute of Chartered Surveyors (RICS). RICS recognizes USPAP as the appraisal standards to use in the US and produces guidance for its members on how to comply with both sets when necessary. RICS is a strong supporter of TAF and has issued written opposition to initiatives in states to recognize other standards. RICS also supports the efforts to harmonize the IVS and USPAP.
SSVS (Statement on Standards for Valuation Services)	Issued by the American Institute of Certified Public Accountants (AICPA), SSVS guides its members on the valuation of a business, business ownership interest, security, or intangible asset.
ASA Business Valuation Standards	The American Society of Appraisers developed its Business Valuation Standards as a supplement to USPAP. ASA has provided written and verbal testimony in opposition to efforts in states to recognize standards in addition to USPAP.
EVS or the Blue Book (European Valuation Standards)	The European Group of Valuers' Associations (TEGoVA) last updated its standards in 2012. Much like a trade association, the organization certifies appraisers who through other associations are deemed to meet TEGoVA's standards.
CUSPAP (Canadian USPAP)	Standards for members of the Appraisal Institute of Canada first introduced in 2001 that were built upon USPAP as authorized by TAF.
SVP (Standards of Valuation Practice)	Alternate standards adopted by the Appraisal Institute in August 2014 for use by its members when USPAP or IVS is not required. Since they are so new, they have been mentioned in a few press releases, but have not been widely embraced or met the test of time.

*Note: This list is not exhaustive but includes the more commonly referred to standards for valuation practice

Appraisal Subcommittee

Federal Financial Institutions Examination Council

June 4, 2015

Ms. Janelle Miyashiro, Consultant
Business and Professions Committee
Legislative Office Building
1020 N St, Room 383
Sacramento, CA 95814

Dear Ms. Miyashiro:

This letter is in reference to Assembly Bill 624, proposed legislation that would amend Sections 11302 and 11319 of the Business and Professions Code relating to real estate appraisers. The Appraisal Subcommittee of the Federal Financial Institutions Examination Council (ASC) is charged with overseeing State appraiser regulatory programs (State programs) for compliance with federal statutory requirements in their supervision of appraisers eligible to conduct appraisals for federally related transactions. While we recognize the proposed legislation applies to non-federally related appraisal activity, the proposed legislation would allow for a "standard of valuation practice" or "any nationally or internationally recognized valuation standard for non-federally related appraisal activity" instead of the congressionally-authorized *Uniform Standards of Professional Appraisal Practice* (USPAP).

The proposed legislation, if adopted, could pose negative implications for California's State program, particularly in the investigation of complaints against appraisers and the necessity to apply varying standards rather than the universally-recognized USPAP. The State program would be required to effectively ensure that USPAP is applied when required by federal law, and to effectively evaluate when, on the other hand, it is permissible for an appraiser to apply a different "standard of valuation practice." Personnel conducting investigations for complaints filed would be required to possess varying levels of expertise dependent on the set of standards permitted. This could well require allocation of additional resources to support effective supervision of appraisers eligible to perform appraisals for federally related transactions, as required by federal law. Additionally, multiple sets of standards could further result in confusion for appraisers, users of appraisal services, regulators, as well as the courts and general public.

Please do not hesitate to contact us if you have any questions.

Sincerely,

James R. Park
Executive Director

cc: Ms. Melinda McClain, Deputy Director of Legislation and Regulatory Review
Mr. Jim Martin, Bureau Chief

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YES, I CAN ACCEPT THAT ASSIGNMENT! USPAP FLEXIBILITY AT A GLANCE

Some appraisers may not be aware of the inherent flexibility built into the *Uniform Standards of Professional Appraisal Practice* (USPAP). Because USPAP is a set of standards that is built on the basic principles of ethics and competency, those who do not appreciate such flexibility can sometimes view USPAP as vague. However, the scope of work concept in USPAP enables appraisers to perform many types of assignments while maintaining compliance with standards. Following are examples of such flexibility:

Assignment Types	Some Examples	Allowed by USPAP?	How Does USPAP Apply?
Oral Appraisal Reports	A client does not require a written report	Yes	STANDARDS 2, 8, 10
Purchase Price Negotiation	A potential buyer is considering purchasing a property or business	Yes	STANDARDS 1 & 2, 7 & 8, 9 & 10
Calculation Engagement	A CEO is considering an acquisition and wants to know the calculated result given a specific valuation method	Yes	STANDARDS 9 & 10
Consulting/Appraisal Consulting[1]	A client is considering developing a vacant parcel and is looking for maximum return	Yes	Advisory Opinion 21
Appraisals for Litigation/Expert Witness Testimony	An attorney needs an impartial opinion of value for legal proceedings	Yes	STANDARDS 1 & 2, 6, 7 & 8, 9 & 10
Evaluations[2] *for Lending*	A lender needs an evaluation providing an opinion of market value to ensure a loan is adequately collateralized	Yes	STANDARDS 1 & 2 and Advisory Opinion 13[3]
Appraisals for Lending	A lender needs an appraisal providing an opinion of value to ensure a loan is adequately collateralized	Yes	STANDARDS 1 & 2, 7 & 8
Appraisal Review	A client needs to know whether or not an appraisal is credible	Yes	STANDARD 3
Appraisals for Charitable Contributions	An individual donating real or personal property requires a qualified appraisal performed by a qualified appraiser[4]	Yes	STANDARDS 1 & 2, 7 & 8
Appraisals for Estates	An executor needs to know the value of property in order to equitably settle an estate; an executor needs to know the Fair Market Value to pay estate taxes	Yes	STANDARDS 1 & 2, 7 & 8, 9 & 10
Appraisals for Insurance	A property owner wants to know how much insurance coverage is adequate; a property owner needs an independent appraisal to help settle a damage/loss claim	Yes	STANDARDS 1 & 2, 7 & 8
Advocacy	An individual who is an appraiser is asked to represent one party in a court proceeding	Yes (see footnote)	ETHICS RULE and Advisory Opinion 21[5]
Assessment Appeals	An appraiser is asked to work for a property owner in an assessment appeals hearing	Yes (see footnote)	ETHICS RULE and Advisory Opinion 21[6]
Contingent Fee	An appraiser agrees to be compensated for the appraisal only when the loan closes	No	Management Section, ETHICS RULE

As illustrated in the preceding chart, USPAP provides tremendous flexibility for appraisers. The SCOPE OF WORK RULE in USPAP requires appraisers to produce credible assignment results, but USPAP requires only those analyses that are necessary for credible results, given the intended use. In assignments performed for real property, personal property, or business valuation/intangible assets, USPAP also includes provisions for an abbreviated reporting format.[7]

In order to protect public trust, USPAP does not permit assignments where an appraiser's fee is contingent on the outcome, or on a subsequent event directly related to the appraiser's opinions.[8]

---

1 Appraisal consulting is no longer defined in USPAP and the Real Property Appraisal Consulting Standards were retired; however, those services formerly called appraisal consulting are still permitted under USPAP.
2 As defined in the *Interagency Appraisal and Evaluation Guidelines*, December 2010.
3 Advisory Opinion 13, *Performing Evaluations of Real Property Collateral to Conform with USPAP*, provides guidance on this topic.
4 Internal Revenue Service, Publication 561.
5 An individual may provide services as an advocate, or as an appraiser (one who expected to perform in a manner that is independent, impartial, and objective); however, one cannot act in both roles in the same assignment. When acting as an advocate, the individual must not misrepresent his or her role.
6 Appraisers may perform assignments for assessment appeals, but cannot do so if the fee is based on a percentage of the cost savings or other events as stated in the Management section of the ETHICS RULE. Appraisers must also ensure they do not misrepresent their role in such assignments.
7 *Restricted Appraisal Reports* are allowed under STANDARDS 2, 8 and 10.
8 Management section of the ETHICS RULE.

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Professional Organizations Supporting One Set of Valuation Standards

American Society of Appraisers

National Association of Independent Fee Appraisers

American Society of Farm Mangers and Rural Appraisers

National Association of Realtors

Royal Institution of Chartered Surveyors

International Society of Appraisers

National Society of Real Estate Appraisers

Maryland Association of Appraisers

Association of Texas Appraisers

Mid-West Appraisers Association

North Carolina Professional Appraisers Coalition

South Carolina Professional Appraisers Coalition

Massachusetts Board of Real Estate Appraisers

Columbia Society of Real Estate Appraisers

Canadian National Association of Real Estate Appraisers

Institute of Professionals in Taxation

COMPARISON BETWEEN THE UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE AND THE APPRAISAL INSTITUTE'S STANDARDS OF VALUATION PRACTICE AND THE VALUERS CODE OF PROFESSIONAL ETHICS

By, Margaret A. Hambleton, SRA
Chair, Appraisal Standards Board of The Appraisal Foundation

This is a comparison between the *Uniform Standards of Professional Appraisal Practice* (USPAP) and the Appraisal Institute's (Institute) Standards of Valuation Practice (SVP) and Valuers Code of Professional Ethics (VCPE). The SVP became effective for Institute members on January 1, 2015, and has been offered in other states as the only document supposedly equivalent to USPAP. The VCPE became effective on July 31, 2015, and is now being presented in addition to SVP to imply equivalency. This comparison is based on the information available as of January 2016. Because the Institute presentation continues to change, this comparison may require updating in the future.

This comparison identifies the areas of deficiency in the SPV and VCPE, and shows that even jointly, these documents fall considerably below the minimum requirements of USPAP.

The SVP is a set of principles, whereas USPAP is a set of principles-based rules. Principles alone cannot be enforced as they are a basic set of ideas or rules. Unless principles contain requirements or prohibitions, there is no way to decide if one has complied with a principle. Why is this important? Principles alone would be extremely difficult, if not impossible, to enforce and would be quite costly.

The VCPE contains five Canons with ethics-related rules. The Canons and their related rules contain some parts of USPAP, but not all. The document also contains some contradictions to the ethical requirements of USPAP.

For comparison purposes only, following are major deficiencies in the SVP in comparison to USPAP, followed by the deficiencies in the VCPE in relation to the applicable parts of USPAP. Taken separately or jointly, the total documents are not equivalent to USPAP.

USPAP AND STANDARDS OF VALUATION PRACTICE (SVP)

USPAP contains DEFINITIONS, the PREAMBLE, the ETHICS RULE, the RECORD KEEPING RULE, the COMPETENCY RULE, the SCOPE OF WORK RULE, and the JURISDICTIONAL EXCEPTION RULE, Standards and Standards Rules, as well as Statements on Appraisal Standards (no active Statements are in USPAP as of 2016).

The SVP contains Definitions and three Standards. There are no corresponding Rules to USPAP, although parts of them appear, as they do in USPAP, in relation to certain Standards.

STANDARD A: *An appraisal must be credible*, is similar to portions of the STANDARD 1, Real Property Appraisal, Development, rules except:

- There are no comments after the Rules.
- SR A-2 contains nothing on non-marketing financing or financing with unusual conditions or incentives, etc., and does not have anything on exposure time.
- There is nothing in SR A that is similar to SR 1-3 (highest and best use considerations).
- SR A-3 discusses only part of the SCOPE OF WORK RULE – a portion of the Scope of Work Acceptability, whereas SR 1-2(h) incorporates the Rule into the Standards Rule.
- SR A-4 falls far below SR 1-4, by simply listing two bullet points on Application of Methodology.
- There is nothing in Standard A about the history of the subject property, including prior sales, agreements of sale, options, and listings.

STANDARD B: *A review must be credible.* This Standard contains only the development portion of STANDARD 3*, Appraisal Review, Development and Reporting.* Again, the standard:

- lacks the specificity necessary to make the Rule meaningful. See SR 3-3 in comparison to SR b-4 for example;
- has the same issue with scope of work applies here as it did in Standard A; and
- does not have comments after each of the Rules.

STANDARD C: *A Report must be clear and not misleading.*

This Standard encompasses both the reporting of an appraisal and the reporting of a review.

- There is one Report option. This option is closer to the Restricted Appraisal Report of USPAP than to the Appraisal Report, **except** the Restricted Appraisal Report in USPAP limits its use to the client only, and warns that the rationale for how the appraiser arrived at the opinions and conclusions set forth in the report may not be understood properly without additional information in the appraiser's workfile.

- The Standard states that:

  An appraisal or review Report, whether oral or written, must contain sufficient information to enable the intended user(s) to understand the Report properly in the context of the intended use. However, consistently in this Standard, the appraiser is only required to state items, including the methods and techniques used to develop the opinions and conclusions, and the opinions and conclusions reached.

  The Standard mentions special assumptions and hypothetical conditions , but does not account for any other assumptions or limiting conditions used in the assignment as does SR 2-1 of USPAP.

- There are no comments after the any of the Rules as there are in USPAP, leaving the presentation up to the individual.

SR C-3: Certification

This certification is not similar in any respect to either 2-3 or 3-6. Both of these USPAP Certifications indicate that "*each written real property appraisal report must contain a signed certification that is*

similar in content to the following form" Additionally, there are comments that are pertinent to specific items relating to the certifications.

The C-3 Certification is a statement that is to be signed by the valuer(s), with one additional comment. The certification statement is: *I certify that, to the best of my knowledge and belief, my analyses, opinions, and conclusions were developed, and this Report complies with the Standards of Valuation Practice.* The statement does **not** include compliance with the Valuers Code of Professional Ethics.

USPAP's Certification contains a statement in addition to the other ethical obligations that an appraiser's analyses, opinions, and conclusions were developed, and this report has been prepared in conformity with the *Uniform Standards of Professional Appraisal Practice.*

The USPAP Certification addresses the ethical responsibilities of the appraiser in completing the appraisal assignments, any significant real property appraisal assistance, etc.

Therefore, the Reporting Standard, including the Certification, also falls below the USPAP requirements.

VALUERS CODE OF PROFESSIONAL ETHICS (VCPE) and USPAP

The Valuers Code of Professional Ethics is a second document that was added subsequent to the release of the SVP, and is not referenced within the SVP document. Therefore, its inclusion as part of the Standards alternative would make the use of these alternatives even more difficult to enforce. There would be one effective date for the Standards part and another for the VCPE as it currently exists. This would create problems for the appraiser/valuer, users of appraisal services, the public, and any state appraiser regulatory agency.

The VCPE begins with **Exceptions to the Ethical Rules.** The exception states:

> *If any part of an Ethical Rule is contrary to a law or regulation of any jurisdiction such part shall be void and of no force or effect in such jurisdiction.*

This exception is not referenced again within the VCPE. The JURISDICTIONAL EXCEPTION RULE in USPAP addresses such applicable laws or regulations and additionally provides steps for an appraiser to follow when an assignment involves a jurisdictional exception. These steps include identification, regulation, compliance, disclosure, and citation in the report of the law or regulation. The JURISDICTIONAL EXCEPTION RULE states:

> *If any applicable law or regulation precludes compliance with any part of USPAP, only that part of USPAP becomes void for that assignment.*
>
> > *<u>Comment</u>: When compliance with USPAP is required by federal law or regulation, no part of USPAP can be voided by a law or regulation of a state or local jurisdiction.*

Canons 1 through 5 contain various components of Ethics (including components of conduct, management, and confidentiality), Competency, and Record Keeping, but the Canons do not meet or exceed the ETHICS RULE, the COMPETENCY RULE, and the RECORD KEEPING RULE of USPAP. Portions of all Rules are followed, but they are followed individually and collectively, and not all of them are

included. In total, they all fall below the USPAP requirements. The major issues are discussed in this document.

Canon 3 of the VCPE contains contradictions to the ETHICS RULE in USPAP. Because of the importance of this issue, it is addressed first.

The Conduct section of the ETHICS RULE of USPAP states that "an appraiser must perform assignments with impartiality, objectivity, and independence, and without accommodation of personal interests." The Conduct section includes a list of prohibitions, one of which states, "**an appraiser must not advocate the cause or interest of any party or issue."**

The Management section of the ETHICS RULE contains additional related prohibitions, including:

> *An appraiser must not accept an assignment, or have a compensation arrangement for an assignment, that is contingent on any of the following:*
>
> *the reporting of a predetermined result (e.g., opinion of value);*
>
> 1. *a direction in assignment results that favors the cause of the client;*
> 2. *the amount of a value opinion;*
> 3. ***the attainment of a stipulated result (e.g., that the loan closes, or taxes or reduced); or***
> 4. ***the occurrence of a subsequent event directly related to the appraiser's opinions and specific to the assignment's purpose.***

The Certification under Standards Rule 2-3 and 3-6 (appraisal and appraisal review) also address contingent fee issues.

Canon 3 of the VCPE is titled: *In Providing Services, a Valuer Must Develop and Report Unbiased Analyses, Opinions, and Conclusions*. Ethical Rules 3-6 and 3-7 address contingent fees also. However, these Rules permit the use of contingent fees under certain conditions, placing an appraiser in a position that advocates the cause or interest of a party or issue.

ER 3-6 states:

> *It is unethical to provide a Service if a valuer has any direct or indirect, current, or prospective personal interest in the subject or outcome of the Service or with respect to the parties involved in the Service,* ***unless:***
>
> > *(a) prior to agreeing to provide the Service, the valuer carefully considers the facts and reasonable concludes that he or she would remain unbiased and reasonable persons, under the same circumstances, would reach the same conclusion;*
> >
> > *(b) such personal interest is disclosed to the client prior to the valuer agreeing to provide the Service; and*
> >
> > *(c) such personal interest is disclosed in each Report resulting from such Service.*

ER 3-7 states:

> *It is unethical, during the period that commences at the time that a valuer is contacted concerning a Service and expires at the completion of such Service, to knowingly acquire, or plan to acquire any direct or indirect, current, or prospective personal interest in the subject or outcome of the Service or with respect to the parties involved in the Service, unless:*
>
> > *(a) the valuer carefully considers the facts and reasonable concludes that he or she would remain unbiased and reasonable persons, under the same circumstances, would reach the same conclusion;*
> >
> > *(b) such personal interest is disclosed to the client and the valuer obtains from the client a written statement consenting to or approving such acquisition or change of position; and*
> >
> > *(c) such personal interest is disclosed in each Report resulting from such Service.*

Allowing contingent fees would affect public trust in the appraisal profession in general, and is contradictory to the requirements of USPAP. Even if an appraiser can remain unbiased in completing the assignment, the fact that the fee is contingent upon the outcome of the assignment places the appraiser in an advocacy position, and serves to erode public trust in an appraiser who is reputed to be objective, independent, and impartial, and who must perform without accommodation of personal interest.

Canon 1: The issue of competency is addressed in Canon 1, ER 1-3. It lacks the specificity contained in the COMPETENCY RULE of USPAP. There is no provision for an appraiser to either decline or withdraw from the assignment if the assignment cannot be completed competently.

Cannon 2 addresses record keeping. It lacks requirements in the RECORD KEEPING RULE of USPAP relating to

> *An appraiser who has custody of the workfile allowing other appraisers with workfile obligations related to an assignment appropriate access and retrieval for the purpose of:*
>
> 1. *submission to state appraiser regulatory agencies;*
> 2. *compliance with due process of law;*
> 3. *submission to a duly authorized professional peer committee; or*
> 4. *compliance with retrieval arrangements.*
>
> *<u>Comment</u>: A workfile must be made available by the appraiser when required by a state appraiser regulatory agency or due process of law.*

Given the above analysis, the Standards of Valuation Practice by itself, or combined with the separate, Valuers Code of Professional Ethics **do not meet** the minimum requirements of USPAP.

Kristen Worman

From: Douglas Oldmixon
Sent: Wednesday, October 5, 2016 6:00 PM
To: David Bunton
Cc: Jamie Wickliffe; James Jeffries; Buster Renfrow; Jesse Barba; Walker Beard; Clayton Black; Patrick Carlson; Laurie Fontana; Brian Padden; Kristen Worman; Kelly Davids; Paula Douglas Seidel
Subject: RE: Correspondence from The Appraisal Foundation Regarding USPAP

David –
Thank you for the correspondence to the Board regarding alternative or additional valuation standards and the extensive attached materials that help to explain the Foundation's position, as well as to acknowledge the existence and use of alternative or additional standards in certain circumstances or jurisdictions. The Board greatly appreciates the educational nature of the materials provided; and will take seriously the advocacy arguments offered.

During this time of rapid technological impacts on appraisal practice, combined with the very slow pace of federal regulatory guidance, states are challenged with considering both consequences and implications for a wide variety of new scenarios presented. Texas is confident in its ability to comprehensively assess the situations presented to it. Be assured that the Board will continue to move with the same very careful consideration it gives to all matters of public policy.

As I shared when we spoke together on a panel on this topic at AARO, the Board is not proactively in search of additional or alternative standards to adopt, but neither are we able to completely ignore a well-reasoned case – if one is ever presented – to consider recognition or adoption of a "…substantially equivalent…" set of valuation standards under appropriate well-defined circumstances. FYI - no case for consideration of AI's Standards of Valuation Practice (SVP) has yet been proposed to the Board; and as you related, the Board of Directors of the Foundation Appraisers Coalition of Texas (FACT) voted on August 19th to decline AI's request to collaborate on such an endeavor.

Again, thank you for stating the Foundation's position and preferences clearly. The Board is grateful for your assistance. Doug

PS. See you in DC later this month for the 25th anniversary celebration of collaboration between TAF and AARO.

Douglas E. Oldmixon

Executive Director, Texas Real Estate Commission
Commissioner, Texas Appraiser Licensing & Certification Board

Phone: 512-936-3088

E-Mail: douglas.oldmixon@trec.texas.gov

"Think like a man of action; act like a man of thought." – Henri-Louis Bergson

TREC
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Protecting Texans' Dreams

From: Paula Douglas Seidel [mailto:paula@appraisalfoundation.org]
Sent: Wednesday, October 05, 2016 3:05 PM
To: Jamie Wickliffe <Jamie.Wickliffe@trec.texas.gov>
Cc: James Jeffries <James.Jeffries@trec.texas.gov>; Buster Renfrow <Buster.Renfrow@trec.texas.gov>; Jesse Barba <Jesse.Barba@trec.texas.gov>; Walker Beard <Walker.Beard@trec.texas.gov>; Clayton Black <Clayton.Black@trec.texas.gov>; Patrick Carlson <Patrick.Carlson@trec.texas.gov>; Laurie Fontana <Laurie.Fontana@trec.texas.gov>; Brian Padden <Brian.Padden@trec.texas.gov>; Douglas Oldmixon <Douglas.Oldmixon@trec.texas.gov>; David Bunton <david@appraisalfoundation.org>; Kelly Davids <kelly@appraisalfoundation.org>
Subject: Correspondence from The Appraisal Foundation Regarding USPAP
Importance: High

Dear Chair Wickliffe,

Please see the attached letter and corresponding material from David Bunton, President of The Appraisal Foundation.

Please feel free to contact me if I can be of any additional assistance.

With Best Regards,
Paula

Paula Douglas Seidel
Executive Administrator
The Appraisal Foundation
www.appraisalfoundation.org
direct phone 202.624.3048

THE APPRAISAL FOUNDATION
Authorized by Congress as the Source of Appraisal Standards and Appraiser Qualifications

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While USPAP is clearly the most widely used real estate valuation standard in the USA, other valuation standards already exist and are regularly used in the USA for a variety of transactions and purposes, and of course - in other nations across the globe that do not require USPAP.

Examples include for non-federally related mortgage transactions, valuations below the $250,000 de minimis value threshold under the inter-agency guidelines, certain property types such as federal lands and many commercial property investment transactions, real property and mortgage loan portfolio investment management and trades, and of course – international valuation standards apply in many other parts of the developed world as a widely accepted standard.

In Texas, by state law, USPAP remains a mandatory overarching framework for the conduct of appraisal practice. This means that the law requires the application of USPAP to all real property valuations completed by appraisers required to be credentialed under Texas Occupations Code Chapter 1103 for all assignments which require a credentialed appraiser. That leaves two clear exceptions – **first** is for any assignment that does not require a credentialed appraiser – or in some cases, ANY credential at all to complete. In Texas, examples of such include business valuations, personal property valuations, and - most importantly under Texas law Sec. 1103.004 – a person authorized by law to perform or provide an evaluation of real property to another person. This law also includes a specific exception for a real estate broker to perform a BPO or CMA under certain conditions. Other examples may include employees of a federal agency that perform evaluations of real property for their employing agency as a part of their job requirements, and their job duties do not require such persons to hold a credential to do so.

The **second** clear area of exception is for valuations that do not specifically require an appraiser credential to perform, even if performed by a credentialed appraiser. For example, an appraiser who is licensed as a real estate broker under Chapter 1101 may perform a BPO or CMA under that license; or one who is also licensed as a Property Tax Consultant under Chapter 1152 may perform a "Uniform and Equal" evaluation under Chapter 41 of the Texas Tax Code. In such cases, the appraiser may perform the evaluation under another law authorizing the activity – and under specific legal or assignment conditions that do not meet all of the requirements of USPAP.

In order to clearly distinguish which "hat" a credentialed appraiser is wearing under such circumstances, Texas law requires an appraiser, when acting under the authority of their real estate broker or PTC license, to include in their report delivered to the client a specific USPAP disclaimer written by our agency. The PTC disclaimer identifies the person as a credentialed appraiser and both inform the report user that the report may not have been prepared using the standards contained in USPAP.

In other circumstances where there may not be direct requirements contained in the applicable law, our agency does not excuse the appraiser from the ethical and administrative requirements under USPAP. In other words, if acting as an appraiser, but using specific law to justify a departure from USPAP requirements, the appraiser must properly invoke the Jurisdictional Exception Rule contained in USPAP.

Much has been said about the need for a "single valuation standard". We believe that the desire is not really for a "single standard", but rather a "common" set of principles. Even the Foundation, in a recent announcement, wisely talks about "harmonizing" USPAP with IVS. This is not the language of identity or duplication, but rather about equivalence and congruence.

In Texas, the Legislature passed a law that grants discretion to the Board to adopt rules that permit other valuation standards "...that are at least as stringent as the Uniform Standards of Professional Appraisal Practice." (1103.405) and promulgate rules for the development of appraisals and conveyance of reports "...that are recognized as substantially equivalent to or consistent with the Uniform Standards of Professional Appraisal Practice. (1103.154) So what does all that mean?

In practice, the Texas statute means that if someone were to approach the Board to request adoption of a rule containing alternative valuation standards, the Board could legitimately evaluate such standards to determine if, under the circumstances and in the marketplace in which the standards might be used, are these proposed standards clearly recognized and accepted by clients in the relevant marketplace as providing the equivalent level of rigor, predictability, and participant protection, as USPAP does for the marketplace of federally related transactions? In Texas, the legislature believes that we have the capacity to answer these questions and make this determination for our citizens – in the same way that the Congress has done so for all US citizens in "federally related transactions".

In Texas, we recognize the jurisdiction of the federal government to make rules within its jurisdiction and accept the role that we are delegated to enforce them. But outside of that jurisdiction, we certainly claim the right to act within the proper sphere that has not been preempted by federal law. While there is a logical case to be made for a "one size fits all" approach, we are firm in our belief that this is but one available option, and should never be a mandate. We are not willing to forfeit our right to choose other options where appropriate – in our judgment and within our rightful sphere of action.

So we will await the time when we decide to act, or the market develops to a state where additional standards make sense – and in our discretion – we will consider what rules may be appropriate to enact. And even then, before adoption and implementation, any such proposed rules will go through the normal highly transparent process we use, with significant and substantial discussion among the stakeholders prior to proposal, and additional ample opportunity for stakeholder and public comment after proposal, and before adoption.

Sec. 1103.002. PURPOSE. The purpose of this chapter is to:
(1) conform state law relating to the regulation of real estate appraisers to the requirements adopted under Title XI, Financial Institutions Reform, Recovery, and Enforcement Act of 1989; and
(2) enforce standards for the appraisal of real property.

Sec. 1103.003. DEFINITIONS. In this chapter:
(1) "Appraisal" means, regardless of whether prepared for a federally related transaction:
(A) an opinion of value; or
(B) the act or process of developing an opinion of value.
(2) "Appraisal Foundation" means The Appraisal Foundation, as defined by 12 U.S.C. Section 3350, or its successor.
(2-a) "Appraisal review" has the meaning assigned by Section 1104.003.
(2-b) "Appraisal Standards Board" means the Appraisal Standards Board of the Appraisal Foundation, or its successor.
(3) "Appraisal Subcommittee" means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council, or its successor.

(4) "Appraiser Qualifications Board" means the Appraiser Qualifications Board of the Appraisal Foundation, or its successor.

(4-a) "Appraiser trainee" means an appraiser trainee licensed under this chapter.

(5) "Board" means the Texas Appraiser Licensing and Certification Board.

(5-a) "Certified appraiser" means a person who is certified under this chapter to practice as a certified general or certified residential appraiser.

(6) "Commissioner" means the commissioner of the Texas Appraiser Licensing and Certification Board.

(6-a) "Federally related transaction" means a real estate-related transaction that:

(A) requires the services of an appraiser; and

(B) is engaged in, contracted for, or regulated by a federal financial institution regulatory agency.

(6-b) "Federal financial institution regulatory agency" means:

(A) the Board of Governors of the Federal Reserve System;

(B) the Federal Deposit Insurance Corporation;

(C) the Office of the Comptroller of the Currency;

(D) the Consumer Financial Protection Bureau;

(E) the National Credit Union Administration; or

(F) the successors of any of those agencies.

(7) "Licensed appraiser" means a person who is licensed under this chapter to practice as a residential real estate appraiser.

(8) "Supervisory appraiser" means a supervisory appraiser as defined by the Appraiser Qualifications Board.

Sec. 1103.004. EFFECT OF CHAPTER. This chapter does not prohibit:

(1) a person authorized by law from performing an evaluation of real property for or providing an evaluation of real property to another person;

(2) a real estate broker licensed under Chapter 1101 or a sales agent acting under the authority of a sponsoring broker from providing to another person a written analysis, opinion, or conclusion relating to the estimated price of real property if the analysis, opinion, or conclusion:

(A) is not referred to as an appraisal;

(B) is given in the ordinary course of the broker's business; and

(C) is related to the actual or potential acquisition, disposition, encumbrance, or management of an interest in real property; or

(3) an appraiser who is certified by a jurisdiction other than this state from performing an appraisal review of an appraisal performed on real property in this state, if the appraiser does not offer an opinion of value as part of the appraisal review.

Sec. 1103.154. RULES RELATING TO PROFESSIONAL CONDUCT. The board may adopt:

(1) rules as necessary to conform to the minimum written standards of the Appraisal Standards Board by incorporating the Uniform Standards of Professional Appraisal Practice;

(2) rules requiring a certified or licensed appraiser or an appraiser trainee to comply with standards of competency, professional conduct, and ethics prescribed by the Uniform Standards of Professional Appraisal Practice, as adopted by the Appraisal Standards Board; and

(3) rules relating to the standards for the development of an appraisal and the conveyance of an appraisal report by a certified or licensed appraiser or an appraiser trainee that are recognized as substantially equivalent to or consistent with the Uniform Standards of Professional Appraisal Practice.

Sec. 1103.201. CERTIFICATE OR LICENSE REQUIRED. (a) A person may not perform an appraisal of real estate unless the person is licensed or certified as an appraiser under this chapter, registered as a temporary out-of-state appraiser under this chapter, or acting as an appraiser trainee under the supervision of a supervisory appraiser.

Sec. 1103.405. PROFESSIONAL STANDARDS. A person who holds a certificate, license, or registration issued under this chapter shall comply with:

(1) the most current edition of the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation; or

(2) other standards provided by board rule that are at least as stringent as the Uniform Standards of Professional Appraisal Practice.

JURISDICTIONAL EXCEPTION RULE

If any applicable law or regulation precludes compliance with any part of USPAP, only that part of USPAP become void for that assignment.

USPAP defines a jurisdictional exception as:

JURISDICTIONAL EXCEPTION: an assignment condition established by applicable law or regulation, which precludes an appraiser from complying with a part of USPAP.

And regarding the RULE, USPAP states:

"The JURISDICTIONAL EXCEPTION RULE provides a saving or severability clause intended to preserve the balance of USPAP if compliance with one or more of its parts is precluded by the law or regulation of a jurisdiction. When an appraiser properly follows this Rule in disregarding a part of USPAP, there is no violation of USPAP."

The appraiser is required to comply with the four action steps of the JURISDICTIONAL EXCEPTION RULE:

1. Identify the law or regulation that precludes compliance with USPAP;
2. Comply with that law or regulation;
3. Clearly and conspicuously disclose in the report the part of USPAP that is voided by that law or regulation; and
4. Cite in the report the law or regulation requiring this exception to USPAP compliance.